

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 1927 Session of  
2021

---

INTRODUCED BY BENHAM, HILL-EVANS, SANCHEZ, N. NELSON, MADDEN,  
A. DAVIS, FREEMAN, CRUZ, T. DAVIS, SIMS, PISCIOTTANO,  
SCHLOSSBERG, KRAJEWSKI, GUENST, INNAMORATO, KINSEY,  
HOHENSTEIN AND HOWARD, SEPTEMBER 28, 2021

---

REFERRED TO COMMITTEE ON HEALTH, SEPTEMBER 28, 2021

---

AN ACT

1 Amending Title 35 (Health and Safety) of the Pennsylvania  
2 Consolidated Statutes, in public safety, providing for crisis  
3 standards of care.

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

6 Section 1. Title 35 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 59

9 CRISIS STANDARDS OF CARE

10 Sec.

11 5901. Scope of chapter.

12 5902. Definitions.

13 5903. Duty of department.

14 5904. Crisis Standards of Care Review Committee.

15 § 5901. Scope of chapter.

16 This chapter relates to crisis standards of care during a  
17 disaster emergency or other catastrophic event.

1 § 5902. Definitions.

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

5 "Committee." The Crisis Standards of Care Review Committee  
6 established in section 5904.

7 "Crisis standards of care." The optimal level of care that  
8 can be delivered by a health care practitioner or hospital  
9 during a disaster emergency or catastrophic event, requiring  
10 substantial change in the provision of health care and usual  
11 health care operations.

12 "Crisis triage officer." A physician with established  
13 expertise in the management of critically ill patients that  
14 oversees the triage process, assesses all patients, assigns a  
15 level of priority for each patient, communicates with treating  
16 physicians, directs attention to the highest-priority patients  
17 and has the responsibility and authority to apply the principles  
18 and processes of crisis standards of care as established in this  
19 act.

20 "Department." The Department of Health of the Commonwealth.

21 "Disability-related characteristics." A physical or mental  
22 impairment that substantially limits one or more major life  
23 activities.

24 "Disaster emergency." As defined in section 7102 (relating  
25 to definitions).

26 "Health care practitioner." As defined in section 103 of the  
27 act of July 19, 1979 (P.L.130, No.48), known as the Health Care  
28 Facilities Act.

29 "Health care services or resources." The furnishing of  
30 medicine, medical or surgical treatment, nursing, hospital

1 services, complementary health services or any other necessary  
2 service of like character, including, but not limited to,  
3 attendance, examination or treatment of any kind provided by a  
4 health care practitioner or hospital.

5 "Hospital." As defined in section 802.1 of the Health Care  
6 Facilities Act.

7 "Medical standard of care." The type and level of medical  
8 care required by professional norms, professional requirements  
9 and institutional objectives, which may vary as circumstances  
10 change, including during disaster emergencies or catastrophic  
11 events.

12 "Principle." An individual who executes an advanced health  
13 care directive, designates an individual to act or disqualifies  
14 an individual from acting as a health care representative or an  
15 individual for whom a health care representative acts in  
16 accordance with this chapter.

17 "Sequential Organ Failure Assessment score" or "SOFA." A  
18 scoring system to determine the extent of a person's organ  
19 function or rate of failure. The score is based on six different  
20 body systems: respiratory, cardiovascular, hepatic,  
21 hematopoietic, renal and neurologic.

22 "Triage." The process of sorting patients and allocating  
23 health care or aid on the basis of need for or likely benefit  
24 from medical treatment.

25 "Triage team." A group of health care practitioners or other  
26 health care professionals as appointed by a hospital to use  
27 clinical care tools and other decision-making tools appropriate  
28 to a disaster emergency or other catastrophic event to provide  
29 information to the crisis triage officer and to help facilitate  
30 and support the crisis triage officer's decision-making process

1 for the allocation of scarce health care services or resources  
2 in compliance with this act.

3 § 5903. Duty of department.

4 (a) Adherence to requirements.--

5 (1) The department shall adhere to the following  
6 requirements when establishing a crisis standards of care  
7 plan for use in this Commonwealth during the declaration of a  
8 disaster emergency under section 7301(c) (relating to general  
9 authority of Governor) or a catastrophic event, if the demand  
10 for scarce health care services or resources exceeds the  
11 supply. The following apply:

12 (i) Allocation of scarce medical services or  
13 resources shall be made on the basis of valuing all life  
14 equally.

15 (ii) All persons shall be eligible for, and  
16 qualified to receive, lifesaving critical health care  
17 services and resources regardless of the presence of an  
18 underlying disability or a comorbidity.

19 (iii) No person or patient shall be denied health  
20 care services or resources based on age, disability,  
21 religion, race, ethnicity, national origin, immigration  
22 status, sex, sexual orientation or gender or gender  
23 identity.

24 (iv) No person or patient shall be denied access to  
25 health care services or resources based on stereotypes,  
26 perceived poor quality of life or judgments about a  
27 person's or patient's worth.

28 (v) Health care practitioners and hospitals shall  
29 only consider a patient's imminent threat of death.

30 (2) This section shall not apply to a patient if that

1 patient will not survive in the immediate-term or short-term  
2 or the treatment is contraindicated.

3 (b) Rights of patients.--A patient or the patient's  
4 designated health care representative has the right to make  
5 health care decisions for the principle. A health care provider  
6 or a representative of a hospital may not pressure or coerce a  
7 patient, a designated health care representative or a family  
8 member of a patient to do any of the following:

9 (1) Sign a do-not-resuscitate order.

10 (2) Direct, initiate, continue, withhold or withdraw  
11 health care services or resources from a patient.

12 (c) Prohibitions.--When determining how to allocate scarce  
13 health care services and resources, a health care practitioner  
14 or hospital may not:

15 (1) Use quality-of-life judgments.

16 (2) Consider long-term mortality, morbidity or life  
17 expectancy.

18 (3) Use resource intensity and duration based on  
19 criteria specified in subsection (a)(1)(iii) and (iv).

20 (4) Reallocate health care services and resources  
21 already in use for a patient's treatment, including resources  
22 which are for a patient's personal use.

23 (d) Health assessments.--Patient assessments shall be made  
24 on a per-patient basis and shall be based solely on the best  
25 available medical standard of care and treatment protocol and  
26 not a patient's perceived health, preexisting conditions or  
27 medical diagnosis.

28 (e) Clinical scoring and assessments and modification.--  
29 Notwithstanding subsection (d), the department's crisis  
30 standards of care plan shall include reasonable modifications to

1 clinical scoring instruments and assessment tools used by a  
2 health care practitioner or hospital to ensure that disability-  
3 related characteristics that are unrelated to short-term  
4 mortality risk do not negatively impact a patient's score. The  
5 modifications shall include, but not be limited to:

6 (1) Modifications for patients whose disabilities may  
7 require an extended period of hospitalization or treatment to  
8 ensure continuum of care and treatment.

9 (2) New assessment tools that are consistent with the  
10 Americans With Disabilities Act of 1990 (Public Law 101-336,  
11 104 Stat. 327), if a patient cannot be accurately and fairly  
12 assessed due to a disability, including the SOFA.

13 (3) Reasonable modifications to ensure that patients  
14 with disabilities and older patients have equal access to  
15 resources, including for:

16 (i) Communications, including access to mobile  
17 telephones and other communications technologies.

18 (ii) Emergency messaging, including access to public  
19 information and emergency alerts.

20 (iii) Mobility.

21 (iv) Religious accommodations.

22 (f) Notice of right to appeal.--Notice shall be given to a  
23 patient, patient health care representative or a patient's  
24 family regarding the right to appeal a triage decision and the  
25 appeals process.

26 § 5904. Crisis Standards of Care Review Committee.

27 (a) Establishment of committee.--The department shall  
28 establish a review committee within the department to review all  
29 critical care decisions or other decision tools made or used by  
30 the crisis triage officer, health care practitioner or triage

1 team making decisions during a disaster emergency or  
2 catastrophic event when life-sustaining resources become scarce,  
3 including decisions to withdraw care, when crisis standards of  
4 care guidelines are in effect. The committee shall:

5 (1) Maintain centralized, consistent information  
6 relating to crisis triage decisions for assessment of  
7 potential areas of concern.

8 (2) Consult with specialists if necessary and assess  
9 whether the crisis triage officer, health care practitioner  
10 or triage team considered all clinical information and  
11 accurately documented the decision.

12 (3) Develop and recommend decision-making algorithms for  
13 use by the crisis triage officer, health care practitioner or  
14 triage team when crisis standards of care are in effect.

15 (b) Authority of committee.--The committee shall retain the  
16 authority to overturn critical care decisions or other decision  
17 tools that are not consistent with or do not comport with crisis  
18 standard of care clinical guidance.

19 (c) Option of patient.--A patient or the patient's health  
20 care practitioner, family member or designated health care  
21 representative shall have the option to seek review of a  
22 decision, particularly for withdrawal of care, from a health  
23 care practitioner outside the review committee or from a medical  
24 ethicist.

25 (d) Training.--The committee shall develop professional  
26 training requirements for health care practitioners to undergo  
27 implicit bias training to avoid justifying withdrawal of care  
28 based on implicit bias and quality-of-life considerations.

29 Section 2. This act shall take effect in 60 days.