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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 339 Session of  
2017

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INTRODUCED BY DeLUCA, READSHAW, KORTZ, CALTAGIRONE, D. COSTA,  
WARD AND ROZZI, FEBRUARY 6, 2017

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REFERRED TO COMMITTEE ON HEALTH, FEBRUARY 6, 2017

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AN ACT

1 Providing for the protection of patients and medical personnel  
2 from health care facility retaliation, for prohibitions, for  
3 rebuttable presumptions, for discriminatory treatment, for  
4 evidence, for civil penalties and remedies, for criminal  
5 penalty, for restitution and damages, for injunctive relief,  
6 for peer review activity and for exemption.

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

9 Section 1. Short title.

10 This act shall be known and may be cited as the Protection of  
11 Patients and Medical Personnel from Health Care Facility  
12 Retaliation Act.

13 Section 2. Definitions.

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

17 "County correctional institution." As defined in 61 Pa.C.S.  
18 § 102 (relating to definitions).

19 "Health care facility." As defined in section 802.1 of the  
20 act of July 19, 1979 (P.L.130, No.48), known as the Health Care

1 Facilities Act. The term includes, but is not limited to, the  
2 facility's administrative personnel, employees, boards and  
3 committees of the board and medical staff.

4 "Medical personnel." An employee, member of the medical  
5 staff or another health care worker of a health care facility.

6 "State correctional institution." As defined in 61 Pa.C.S. §  
7 102 (relating to definitions).

8 Section 3. Prohibitions.

9 (a) Health care facilities.--A health care facility may not  
10 discriminate or retaliate against a patient or medical personnel  
11 because the patient or medical personnel has done either of the  
12 following:

13 (1) Presented a grievance, complaint or report to the  
14 facility, to an entity or agency responsible for accrediting  
15 or evaluating the facility, to the medical staff of the  
16 facility or to another governmental entity.

17 (2) Initiated, participated or cooperated in an  
18 investigation or administrative proceeding related to the  
19 quality of care, services or conditions at the facility that  
20 is carried out by an entity or agency responsible for  
21 accrediting or evaluating the facility or its medical staff  
22 or governmental entity.

23 (b) Entities.--An entity that owns or operates a health care  
24 facility or another health care facility may not discriminate or  
25 retaliate against a person because the person took action under  
26 this act.

27 Section 4. Rebuttable presumption relating to patients.

28 A type of discriminatory treatment of a patient by whom, or  
29 upon whose behalf, a grievance or complaint has been submitted  
30 to a governmental entity or received by a health care facility

1 administrator within 180 days of the filing of the grievance or  
2 complaint shall raise a rebuttable presumption that the action  
3 was taken by the health care facility in retaliation for the  
4 filing of the grievance or complaint.

5 Section 5. Rebuttable presumption relating to medical  
6 personnel.

7 There shall be a rebuttable presumption that discriminatory  
8 action was taken by the health care facility, or by the entity  
9 that owns or operates that health care facility, or that owns or  
10 operates any other health care facility, in retaliation against  
11 medical personnel if responsible staff at the facility or the  
12 entity that owns or operates the facility:

13 (1) Had knowledge of the actions.

14 (2) Participated or cooperated with the medical  
15 personnel responsible for acts described in section 3.

16 (3) Commits a discriminatory act within 120 days of the  
17 filing of the grievance or complaint by the medical  
18 personnel.

19 Section 6. Discriminatory treatment.

20 For purposes of this act, discriminatory treatment of medical  
21 personnel includes, but is not limited to, discharge, demotion,  
22 suspension or any unfavorable changes in, or breach of, the  
23 terms or conditions of a contract, employment or privileges of  
24 the medical personnel or the threat of any of the actions.

25 Section 7. Evidence.

26 The presumptions in sections 4 and 5 shall be presumptions  
27 affecting the burden of producing evidence as provided in 42  
28 Pa.C.S. Ch. 61 (relating to rules of evidence).

29 Section 8. Civil penalties and remedies.

30 (a) Secretary of Health.--Upon a determination by hearing

1 that this act was violated, the Secretary of Health may pursue  
2 one or more of the following courses of action:

3 (1) Issue an order requiring the person in violation to  
4 cease and desist from engaging in the violation.

5 (2) Suspend or revoke or refuse to issue or renew the  
6 certificate or license of the person in violation.

7 (3) Impose a civil penalty of not more than \$25,000 for  
8 each violation.

9 (4) Impose another appropriate remedy.

10 (b) Other remedies.--The enforcement remedies imposed under  
11 this section are in addition to other remedies or penalties that  
12 may be imposed by this or other applicable statute.

13 Section 9. Criminal penalty.

14 In addition to another penalty assessed under this or another  
15 act, a person who willfully violates this section commits a  
16 misdemeanor punishable by a fine of not more than \$20,000.

17 Section 10. Restitution and damages.

18 (a) Employee.--An employee who has been discriminated  
19 against in employment under this act shall be entitled to:

20 (1) reinstatement, reimbursement for lost wages and work  
21 benefits caused by the acts of the employer and the legal  
22 costs associated with pursuing the case; or

23 (2) a remedy deemed warranted by a court of competent  
24 jurisdiction.

25 (b) Health care worker.--A health care worker who has been  
26 discriminated against under this act shall be entitled to:

27 (1) reimbursement for lost income and the legal costs  
28 associated with pursuing the case; or

29 (2) a remedy deemed warranted by a court of competent  
30 jurisdiction.

1 (c) Medical staff.--A member of the medical staff who has  
2 been discriminated against under this section shall be entitled  
3 to reinstatement, reimbursement for lost income resulting from a  
4 change in the terms or conditions of his privileges caused by  
5 the acts of the health care facility or the entity that owns or  
6 operates a health care facility or another health care facility  
7 that is owned or operated by that entity, and the legal costs  
8 associated with pursuing the case, or to a remedy deemed  
9 warranted by a court of competent jurisdiction.

10 Section 11. Injunctive relief relating to peer review.

11 (a) Right to petition.--The medical staff of a health care  
12 facility may petition a court for an injunction to protect a  
13 peer review committee from being required to comply with  
14 evidentiary demands on a pending peer review hearing from the  
15 member of the medical staff who has filed an action under this  
16 section, if the evidentiary demands from the complainant would  
17 impede the peer review process or endanger the health and safety  
18 of patients of the health care facility during the peer review  
19 process.

20 (b) In-camera review.--Prior to granting an injunction, the  
21 court shall conduct an in-camera review of the evidence sought  
22 to be discovered to determine if a peer review hearing, as  
23 authorized by law, would be impeded. If it is determined that  
24 the peer review hearing will be impeded, the injunction shall be  
25 granted until the peer review hearing is completed.

26 (c) Irreparable harm.--Nothing in this section shall be  
27 construed to preclude the court, on motion of its own or by a  
28 party, from issuing an injunction or other order under this act  
29 in the interest of justice for the duration of the peer review  
30 process to protect the person from irreparable harm.

1 Section 12. Peer review activity.

2 This act may not be construed to limit the ability of the  
3 medical staff to carry out its legitimate peer review activities  
4 in accordance with 35 Pa.C.S. Ch. 81 (relating to emergency  
5 medical services system) or other law.

6 Section 13. Exemption.

7 This act shall not apply to an inmate of a State correctional  
8 institution or juvenile facility owned or operated by the State  
9 or local government or to an inmate housed in a local detention  
10 facility, including a county correctional institution or a  
11 juvenile hall, juvenile camp or other juvenile detention  
12 facility.

13 Section 14. Effective date.

14 This act shall take effect in 60 days.