S T A T E O F N E W Y O R K

1724

2009-2010 Regular Sessions

I N A S S E M B L Y

January 9, 2009

Introduced by M. of A. GOTTFRIED, GALEF, JACOBS, DINOWITZ, PERRY, V. LOPEZ, KAVANAGH, PAULIN -- Multi-Sponsored by -- M. of A. AUBRY, BOYLAND, BRENNAN, CAHILL, CLARK, COLTON, COOK, CUSICK, CYMBROWITZ, ENGLEBRIGHT, FARRELL, GLICK, HEASTIE, HOOPER, HOYT, JAFFEE, JOHN, KELLNER, KOON, LATIMER, McENENY, MILLMAN, ORTIZ, PERALTA, PHEFFER, J. RIVERA, P. RIVERA, ROBINSON, SCHIMEL, SWEENEY -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the social services law, in relation to requiring incident reporting by home care services agencies, hospitals, and adult care facilities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public health law is amended by adding a new section 3605-b to read as follows:

S 3605-B. INCIDENT REPORTING. 1. EVERY HOME CARE SERVICES AGENCY SHALL REPORT EVERY REPORTABLE INCIDENT TO THE DEPARTMENT IN A MANNER AND WITHIN TIME PERIODS AS MAY BE SPECIFIED BY REGULATION OF THE DEPARTMENT.

2. "REPORTABLE INCIDENT" MEANS (A) ANY INCIDENT IN THE COURSE OF OR AFFECTING HOME CARE SERVICES WHICH, IF IT OCCURRED IN A HOSPITAL SUBJECT TO SECTION TWENTY-EIGHT HUNDRED FIVE-L OF THIS CHAPTER, WOULD BE REPORTABLE UNDER SUCH SECTION, AND (B) ANY TRANSFER OF A PATIENT TO A HOSPITAL AS A RESULT OF HOME CARE SERVICES.

3. THE HOME CARE SERVICES AGENCY SHALL CONDUCT AN INVESTIGATION OF ANY REPORTABLE INCIDENT WITHIN THIRTY DAYS OF OBTAINING KNOWLEDGE OF ANY INFORMATION WHICH REASONABLY APPEARS TO SHOW THAT A REPORTABLE INCIDENT HAS OCCURRED, PROVIDED THAT, IF THE HOME CARE SERVICES AGENCY REASONABLY EXPECTS THE INVESTIGATION TO EXTEND BEYOND THE THIRTY DAY PERIOD, THE HOME CARE SERVICES AGENCY SHALL NOTIFY THE DEPARTMENT OF THE EXPECTATION AND THE REASON THEREFOR, AND SHALL INFORM THE DEPARTMENT OF THE EXPECTED COMPLETION DATE OF THE INVESTIGATION. THE HOME CARE SERVICES AGENCY SHALL PROVIDE TO THE DEPARTMENT A COPY OF THE INVESTIGATION REPORT WITH-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

IN TWENTY-FOUR HOURS OF COMPLETION. NOTHING IN THIS SECTION SHALL LIMIT THE AUTHORITY OF THE DEPARTMENT TO CONDUCT AN INVESTIGATION OF INCIDENTS OCCURRING IN HOME CARE SETTINGS.

4. THE COMMISSIONER SHALL REFER ANY INFORMATION IN A REPORT UNDER THIS SECTION FOR APPROPRIATE ACTION TO (A) THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT, IN THE CASE OF A PHYSICIAN, PHYSICIAN'S ASSISTANT OR SPECIALIST'S ASSISTANT; (B) THE OFFICE OF THE PROFESSIONS OF THE EDUCATION DEPARTMENT, IN THE CASE OF ANY OTHER HEALTH CARE PRACTITIONER; OR (C) IN AN APPROPRIATE CASE, ANY OTHER GOVERNMENTAL AGENCY WITH APPROPRIATE JURISDICTION WHICH COULD RECEIVE SUCH INFORMATION IF SUCH INFORMATION HAD BEEN REPORTED TO THE DEPARTMENT PURSUANT TO SECTION TWENTY-EIGHT HUNDRED FIVE-L OF THIS CHAPTER.

5. THE COMMISSIONER SHALL COMPILE IN THE SAME MANNER AS INFORMATION RECEIVED, OR COMPILED PURSUANT TO SECTION TWENTY-EIGHT HUNDRED FIVE-L OF THIS CHAPTER, STATISTICAL DATA TO THE EXTENT IT IS REPORTED UNDER THIS SECTION, AND SHALL REPORT TO THE GOVERNOR, THE LEGISLATURE, AND THE PUBLIC SUCH DATA, ALONG WITH ANY COMMENTS OR RECOMMENDATIONS THAT THE COMMISSIONER MAY HAVE, NO LATER THAN AUGUST FIFTEENTH OF THE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION, AND EACH YEAR THEREAFTER.

6. ALL REPORTS AND OTHER INFORMATION REQUIRED TO BE REPORTED TO THE DEPARTMENT UNDER THIS SECTION, INCLUDING INDIVIDUAL PATIENT IDENTIFYING INFORMATION, SHALL BE KEPT CONFIDENTIAL BY THE DEPARTMENT AND THE DEPARTMENT OF EDUCATION AND SHALL NOT BE SUBJECT TO DISCLOSURE UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW OR ARTICLE THIRTY-ONE OF THE CIVIL PRACTICE LAW AND RULES, EXCEPT AS PROVIDED IN THIS SECTION OR ANY OTHER PROVISION OF LAW.

7. THIS SECTION DOES NOT REPLACE ANY OTHER REPORTING REQUIRED BY THIS CHAPTER OR OTHER PROVISIONS OF LAW.

8. THE COMMISSIONER IS AUTHORIZED TO MAKE ANY RULES OR REGULATIONS APPROPRIATE TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

S 2. Subdivision 1 of section 2805-l of the public health law, as added by chapter 266 of the laws of 1986, is amended to read as follows:

1. All hospitals, as defined in subdivision [ten] ONE of section twenty-eight hundred one of this article, shall be required to report incidents described by subdivision two of this section to the department in a manner and within time periods as may be specified by regulation of the department.

S 3. The social services law is amended by adding a new section 461-s to read as follows:

S 461-S. INCIDENT REPORTING. 1. EVERY ADULT CARE FACILITY SHALL REPORT EVERY REPORTABLE INCIDENT TO THE DEPARTMENT OF HEALTH IN A MANNER AND WITHIN TIME PERIODS AS MAY BE SPECIFIED BY REGULATION OF THE DEPARTMENT OF HEALTH.

2. "REPORTABLE INCIDENT" MEANS (A) ANY INCIDENT IN THE COURSE OF OR AFFECTING ADULT CARE FACILITIES WHICH, IF IT OCCURRED IN A HOSPITAL SUBJECT TO SECTION TWENTY-EIGHT HUNDRED FIVE-L OF THE PUBLIC HEALTH LAW, WOULD BE REPORTABLE UNDER SUCH SECTION, AND (B) ANY TRANSFER OF A PATIENT TO A HOSPITAL FROM AN ADULT CARE FACILITY.

3. THE ADULT CARE FACILITIES SHALL CONDUCT AN INVESTIGATION OF ANY REPORTABLE INCIDENT WITHIN THIRTY DAYS OF OBTAINING KNOWLEDGE OF ANY INFORMATION WHICH REASONABLY APPEARS TO SHOW THAT A REPORTABLE INCIDENT HAS OCCURRED, PROVIDED THAT, IF THE ADULT CARE FACILITY REASONABLY EXPECTS THE INVESTIGATION TO EXTEND BEYOND THE THIRTY DAY PERIOD, THE ADULT CARE FACILITY SHALL NOTIFY THE DEPARTMENT OF HEALTH OF THE EXPECTED COMPLETION DATE OF THE INVESTIGATION. THE ADULT CARE FACILITY SHALL PROVIDE TO THE DEPARTMENT OF HEALTH A COPY OF THE INVESTIGATION

REPORT WITHIN TWENTY-FOUR HOURS OF COMPLETION. NOTHING IN THIS SECTION SHALL LIMIT THE AUTHORITY OF THE DEPARTMENT OF HEALTH TO CONDUCT AN INVESTIGATION OF INCIDENTS OCCURRING IN ADULT CARE FACILITIES.

4. THE COMMISSIONER OF HEALTH SHALL REFER ANY INFORMATION IN A REPORT UNDER THIS SECTION FOR APPROPRIATE ACTION TO (A) THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT, IN THE CASE OF A PHYSICIAN, PHYSICIAN'S ASSISTANT OR SPECIALIST'S ASSISTANT; (B) THE OFFICE OF THE PROFESSIONS OF THE EDUCATION DEPARTMENT, IN THE CASE OF ANY OTHER HEALTH CARE PRACTITIONER; OR (C) IN AN APPROPRIATE CASE, ANY OTHER GOVERNMENTAL AGENCY WITH APPROPRIATE JURISDICTION WHICH COULD RECEIVE SUCH INFORMATION IF SUCH INFORMATION HAD BEEN REPORTED TO THE DEPARTMENT OF HEALTH PURSUANT TO SECTION TWENTY-EIGHT HUNDRED FIVE-L OF THE PUBLIC HEALTH LAW.

5. THE COMMISSIONER OF HEALTH SHALL COMPILE IN THE SAME MANNER AS INFORMATION RECEIVED OR COMPLIED PURSUANT TO SECTION TWENTY-EIGHT HUNDRED FIVE-L OF THE PUBLIC HEALTH LAW, STATISTICAL DATA TO THE EXTENT IT IS REPORTED UNDER THIS SECTION, AND SHALL REPORT TO THE GOVERNOR, THE LEGISLATURE, AND THE PUBLIC SUCH DATA ALONG WITH ANY COMMENTS OR RECOMMENDATIONS THAT THE COMMISSIONER OF HEALTH MAY HAVE, NO LATER THAN AUGUST FIFTEENTH OF THE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION, AND EACH YEAR THEREAFTER.

6. ALL REPORTS AND OTHER INFORMATION REQUIRED TO BE REPORTED TO THE DEPARTMENT UNDER THIS SECTION, INCLUDING INDIVIDUAL PATIENT IDENTIFYING INFORMATION, SHALL BE KEPT CONFIDENTIAL BY THE DEPARTMENT OF HEALTH AND THE DEPARTMENT OF EDUCATION AND SHALL NOT BE SUBJECT TO DISCLOSURE UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW OR ARTICLE THIRTY-ONE OF THE CIVIL PRACTICE LAW AND RULES, EXCEPT AS PROVIDED IN THIS SECTION OR ANY OTHER PROVISION OF LAW.

7. THIS SECTION DOES NOT REPLACE ANY OTHER REPORTING REQUIRED BY THIS CHAPTER OR OTHER PROVISIONS OF LAW.

8. THE COMMISSIONER OF HEALTH IS AUTHORIZED TO MAKE ANY RULES OR REGULATIONS APPROPRIATE TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

S 4. This act shall take effect on the one hundred twentieth day after it shall have become a law.