

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:

1 Section 1. The public health law is amended by adding a new section  
2 3605-b to read as follows:  
3 S 3605-B. INCIDENT REPORTING. 1. EVERY HOME CARE SERVICES AGENCY SHALL  
4 REPORT EVERY REPORTABLE INCIDENT TO THE DEPARTMENT IN A MANNER AND WITH-  
5 IN TIME PERIODS AS MAY BE SPECIFIED BY REGULATION OF THE DEPARTMENT.  
6 2. "REPORTABLE INCIDENT" MEANS (A) ANY INCIDENT IN THE COURSE OF OR  
7 AFFECTING HOME CARE SERVICES WHICH, IF IT OCCURRED IN A HOSPITAL SUBJECT  
8 TO SECTION TWENTY-EIGHT HUNDRED FIVE-L OF THIS CHAPTER, WOULD BE REPORT-  
9 ABLE UNDER SUCH SECTION, AND (B) ANY TRANSFER OF A PATIENT TO A HOSPITAL  
10 AS A RESULT OF HOME CARE SERVICES.  
11 3. THE HOME CARE SERVICES AGENCY SHALL CONDUCT AN INVESTIGATION OF ANY  
12 REPORTABLE INCIDENT WITHIN THIRTY DAYS OF OBTAINING KNOWLEDGE OF ANY  
13 INFORMATION WHICH REASONABLY APPEARS TO SHOW THAT A REPORTABLE INCIDENT  
14 HAS OCCURRED, PROVIDED THAT, IF THE HOME CARE SERVICES AGENCY REASONABLY  
15 EXPECTS THE INVESTIGATION TO EXTEND BEYOND THE THIRTY DAY PERIOD, THE  
16 HOME CARE SERVICES AGENCY SHALL NOTIFY THE DEPARTMENT OF THE EXPECTATION  
17 AND THE REASON THEREFOR, AND SHALL INFORM THE DEPARTMENT OF THE EXPECTED  
18 COMPLETION DATE OF THE INVESTIGATION. THE HOME CARE SERVICES AGENCY  
19 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.

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

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

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

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

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

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

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

33 1. All hospitals, as defined in subdivision [ten] ONE of section twen-  
34 ty-eight hundred one of this article, shall be required to report inci-  
35 dents described by subdivision two of this section to the department in  
36 a manner and within time periods as may be specified by regulation of  
37 the department.

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

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

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

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

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

4 4. THE COMMISSIONER OF HEALTH SHALL REFER ANY INFORMATION IN A REPORT  
5 UNDER THIS SECTION FOR APPROPRIATE ACTION TO (A) THE OFFICE OF PROFES-  
6 SIONAL MEDICAL CONDUCT, IN THE CASE OF A PHYSICIAN, PHYSICIAN'S ASSIST-  
7 ANT OR SPECIALIST'S ASSISTANT; (B) THE OFFICE OF THE PROFESSIONS OF THE  
8 EDUCATION DEPARTMENT, IN THE CASE OF ANY OTHER HEALTH CARE PRACTITIONER;  
9 OR (C) IN AN APPROPRIATE CASE, ANY OTHER GOVERNMENTAL AGENCY WITH APPRO-  
10 PRIATE JURISDICTION WHICH COULD RECEIVE SUCH INFORMATION IF SUCH INFOR-  
11 MATION HAD BEEN REPORTED TO THE DEPARTMENT OF HEALTH PURSUANT TO SECTION  
12 TWENTY-EIGHT HUNDRED FIVE-L OF THE PUBLIC HEALTH LAW.

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

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

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

30 8. THE COMMISSIONER OF HEALTH IS AUTHORIZED TO MAKE ANY RULES OR REGU-  
31 LATIONS APPROPRIATE TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

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