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

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I N S E N A T E

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Introduced by Sens. KLEIN, DILAN, ONORATO, SAMPSON, SAVINO, SMITH, STACHOWSKI, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the mental hygiene law, in relation to security within certain hospitals and facilities; providing certain staffing requirements for internal risk management programs; requiring the investigation and reporting of an allegation of sexual misconduct, sexual abuse, or other criminal misconduct at certain health care facilities; prohibiting false allegations; providing a penalty; and authorizing release of employee records of a licensed facility to other employers

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 article 28-F to read as follows:

ARTICLE 28-F
HOSPITAL SECURITY

SECTION 2899-AA. DEFINITIONS.
2899-BB. APPLICABILITY.
2899-CC. INTERNAL RISK MANAGEMENT PROGRAM.
2899-DD. INVESTIGATION AND REPORT OF MISCONDUCT.
2899-EE. FALSE ALLEGATIONS.
2899-FF. PENALTY.
2899-GG. RECORDS.

S 2899-AA. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "CRIME" MEANS ANY ACT DEFINED AS A FELONY OR MISDEMEANOR BY THE PENAL LAW.

(B) "HOSPITAL" INCLUDES ANY INSTITUTION DEFINED AS A HOSPITAL BY ARTICLE TWENTY-EIGHT OF THIS CHAPTER.

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

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(C) "SEXUAL MISCONDUCT" INCLUDES ANY CRIME DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW.

S 2899-BB. APPLICABILITY. THE PROVISIONS OF THIS ARTICLE SHALL APPLY IN ANY CITY WITH A POPULATION OF ONE MILLION OR MORE.

S 2899-CC. INTERNAL RISK MANAGEMENT PROGRAM. EVERY HOSPITAL SHALL, AS A PART OF ITS ADMINISTRATIVE FUNCTIONS, ESTABLISH AN INTERNAL RISK MANAGEMENT PROGRAM THAT INCLUDES ALL OF THE FOLLOWING COMPONENTS:

(A) THE INVESTIGATION AND ANALYSIS OF THE FREQUENCY AND CAUSES OF GENERAL CATEGORIES AND SPECIFIC TYPES OF ADVERSE INCIDENTS CAUSING INJURY TO PATIENTS.

(B) THE DEVELOPMENT OF APPROPRIATE MEASURES TO MINIMIZE THE RISK OF INJURIES AND ADVERSE INCIDENTS TO PATIENTS, INCLUDING, BUT NOT LIMITED TO:

(1) RISK MANAGEMENT AND RISK PREVENTION EDUCATION AND TRAINING OF ALL NONPHYSICIAN PERSONNEL AS FOLLOWS:

(I) SUCH EDUCATION AND TRAINING OF ALL NONPHYSICIAN PERSONNEL AS PART OF THEIR INITIAL ORIENTATION;

(II) AT LEAST ONE HOUR OF SUCH EDUCATION AND TRAINING ANNUALLY FOR ALL NONPHYSICIAN PERSONNEL OF THE LICENSED FACILITY WORKING IN CLINICAL AREAS AND PROVIDING PATIENT CARE;

(III) THE ANALYSIS OF PATIENT GRIEVANCES WHICH RELATE TO PATIENT CARE AND POSSIBLE CASES OF MISCONDUCT; AND

(IV) THE DEVELOPMENT AND IMPLEMENTATION OF AN INCIDENT REPORTING SYSTEM BASED UPON THE AFFIRMATIVE DUTY OF ALL HEALTH CARE PROVIDERS AND ALL AGENTS AND EMPLOYEES OF THE HOSPITAL TO REPORT ADVERSE INCIDENTS TO THE RISK MANAGER.

(2) A PROHIBITION, EXCEPT WHEN EMERGENCY CIRCUMSTANCES REQUIRE OTHERWISE, AGAINST A STAFF MEMBER OF THE HOSPITAL ATTENDING A PATIENT IN THE RECOVERY ROOM, UNLESS THE STAFF MEMBER IS AUTHORIZED TO ATTEND THE PATIENT IN THE RECOVERY ROOM AND IS IN THE COMPANY OF AT LEAST ONE OTHER PERSON. HOWEVER, A HOSPITAL IS EXEMPT FROM THE TWO-PERSON REQUIREMENT IF IT HAS:

(I) LIVE VISUAL OBSERVATION;

(II) ELECTRONIC OBSERVATION; OR

(III) ANY OTHER REASONABLE MEASURE TAKEN TO ENSURE PATIENT PROTECTION AND PRIVACY.

(3) THE ESTABLISHMENT OF THE POSITION OF INTERNAL RISK MANAGER.

S 2899-DD. INVESTIGATION AND REPORT OF MISCONDUCT. THE INTERNAL RISK MANAGER OF EACH HOSPITAL SHALL:

(A) NOTIFY THE FAMILY OR GUARDIAN OF THE VICTIM, IF A MINOR, THAT AN ALLEGATION OF SEXUAL MISCONDUCT OR OTHER CRIME HAS BEEN MADE AND THAT AN INVESTIGATION IS BEING CONDUCTED;

(B) INVESTIGATE EVERY ALLEGATION OF SEXUAL MISCONDUCT OR OTHER CRIME WHICH IS MADE AGAINST A MEMBER OF THE HOSPITAL'S PERSONNEL OR A PATIENT, WHEN THE ALLEGATION IS THAT THE SEXUAL MISCONDUCT OR OTHER CRIME OCCURRED AT THE HOSPITAL OR ON THE GROUNDS OF THE HOSPITAL;

(C) REPORT EVERY ALLEGATION OF SEXUAL OR CRIMINAL MISCONDUCT TO THE ADMINISTRATOR OF THE HOSPITAL; AND

(D) ANY EMPLOYEE WHO WITNESSES OR WHO POSSESSES ACTUAL KNOWLEDGE OF AN ACT THAT CONSTITUTES SEXUAL MISCONDUCT OR OTHER CRIME SHALL:

(1) NOTIFY THE LOCAL POLICE; AND

(2) NOTIFY THE INTERNAL RISK MANAGER AND THE HOSPITAL ADMINISTRATOR.

S 2899-EE. FALSE ALLEGATIONS. A PERSON WHO, WITH MALICE OR WITH INTENT TO DISCREDIT OR HARM A HOSPITAL OR ANY PERSON, MAKES A FALSE ALLEGATION OF SEXUAL MISCONDUCT AGAINST A MEMBER OF A HOSPITAL'S PERSONNEL IS GUIL-

TY OF A MISDEMEANOR, AND SHALL BE PUNISHED BY IMPRISONMENT FOR A PERIOD OF UP TO THREE MONTHS.

S 2899-FF. PENALTY. IN ADDITION TO ANY PENALTY OTHERWISE PROVIDED BY LAW THE DEPARTMENT MAY IMPOSE AN ADMINISTRATIVE FINE, NOT TO EXCEED FIVE THOUSAND DOLLARS, FOR ANY VIOLATION OF THE REPORTING REQUIREMENTS OF THIS ARTICLE.

S 2899-GG. RECORDS. (A) EACH HOSPITAL SHALL REPORT INCIDENTS OF SEXUAL MISCONDUCT OR OTHER CRIME TO THE DEPARTMENT PURSUANT TO ITS RULES THEREFOR.

(B) THE DEPARTMENT SHALL HAVE ACCESS TO ALL HOSPITAL RECORDS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION. THE DEPARTMENT OR THE APPROPRIATE REGULATORY BODY SHALL MAKE AVAILABLE, UPON WRITTEN REQUEST BY A HEALTH CARE PROFESSIONAL AGAINST WHOM PROBABLE CAUSE HAS BEEN FOUND, ANY SUCH RECORDS WHICH FORM THE BASIS OF THE DETERMINATION OF PROBABLE CAUSE.

(C) THE DEPARTMENT SHALL REVIEW, AS PART OF ITS LICENSURE INSPECTION PROCESS, THE INTERNAL RISK MANAGEMENT PROGRAM AT EACH HOSPITAL TO DETERMINE WHETHER OR NOT THE PROGRAM MEETS STANDARDS ESTABLISHED IN LAW AND RULES, WHETHER OR NOT THE PROGRAM IS BEING CONDUCTED IN A MANNER DESIGNED TO REDUCE ADVERSE INCIDENTS, AND WHETHER OR NOT THE PROGRAM IS APPROPRIATELY REPORTING INCIDENTS.

(D) IF THE DEPARTMENT, THROUGH ITS RECEIPT OF THE ANNUAL REPORTS PRESCRIBED IN THIS SECTION OR THROUGH ANY INVESTIGATION, HAS A REASONABLE BELIEF THAT CONDUCT BY A STAFF MEMBER OR EMPLOYEE OF A HOSPITAL IS GROUNDS FOR DISCIPLINARY ACTION BY THE APPROPRIATE REGULATORY BODY, THE DEPARTMENT SHALL REPORT THIS FACT TO SUCH REGULATORY BODY.

(E) THE DEPARTMENT SHALL ANNUALLY PUBLISH A REPORT SUMMARIZING THE INFORMATION CONTAINED IN THE INCIDENT REPORTS SUBMITTED BY HOSPITALS. THIS REPORT MUST, AT A MINIMUM, SUMMARIZE:

(1) ADVERSE AND SERIOUS INCIDENTS, BY CATEGORY OF REPORTED INCIDENT, AND BY TYPE OF EMPLOYEE INVOLVED.

(2) DISCIPLINARY ACTIONS TAKEN AGAINST PROFESSIONALS, AND BY TYPE OF PROFESSIONAL INVOLVED.

(3) SUMMARY OF INCIDENTS CAUSED BY ANOTHER PATIENT.

(F) A HOSPITAL MAY PRESCRIBE THE CONTENT AND CUSTODY OF LIMITED ACCESS RECORDS WHICH THE HOSPITAL MAY MAINTAIN ON ITS EMPLOYEES. SUCH RECORDS SHALL BE LIMITED TO INFORMATION REGARDING EVALUATIONS OF EMPLOYEE PERFORMANCE, INCLUDING RECORDS FORMING THE BASIS FOR EVALUATION AND SUBSEQUENT ACTIONS, AND SHALL BE OPEN TO INSPECTION ONLY BY THE EMPLOYEE AND BY OFFICIALS OF THE HOSPITAL WHO ARE RESPONSIBLE FOR THE SUPERVISION OF THE EMPLOYEE. ANY HOSPITAL RELEASING SUCH RECORDS PURSUANT TO THIS SECTION SHALL BE CONSIDERED TO BE ACTING IN GOOD FAITH AND MAY NOT BE HELD LIABLE FOR INFORMATION CONTAINED IN SUCH RECORDS, ABSENT A SHOWING THAT THE HOSPITAL MALICIOUSLY FALSIFIED SUCH RECORDS.

S 2. The mental hygiene law is amended by adding a new article 30 to read as follows:

ARTICLE 30

HOSPITAL AND FACILITY SECURITY

SECTION 30.01 DEFINITIONS.
30.03 APPLICABILITY.
30.05 INTERNAL RISK MANAGEMENT PROGRAM.
30.07 INVESTIGATION AND REPORT OF MISCONDUCT.
30.09 FALSE ALLEGATIONS.
30.11 PENALTY.
30.13 RECORDS.

S 30.01 DEFINITIONS.

FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "CRIME" MEANS ANY ACT DEFINED AS A FELONY OR MISDEMEANOR BY THE PENAL LAW.

(B) "FACILITY" DOES NOT INCLUDE A COMMUNITY RESIDENCE.

(C) "SEXUAL MISCONDUCT" INCLUDES ANY CRIME DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW.

S 30.03 APPLICABILITY.

THE PROVISIONS OF THIS ARTICLE SHALL APPLY IN ANY CITY WITH A POPULATION OF ONE MILLION OR MORE.

S 30.05 INTERNAL RISK MANAGEMENT PROGRAM.

EVERY HOSPITAL AND FACILITY SHALL, AS A PART OF ITS ADMINISTRATIVE FUNCTIONS, ESTABLISH AN INTERNAL RISK MANAGEMENT PROGRAM THAT INCLUDES ALL OF THE FOLLOWING COMPONENTS:

(A) THE INVESTIGATION AND ANALYSIS OF THE FREQUENCY AND CAUSES OF GENERAL CATEGORIES AND SPECIFIC TYPES OF ADVERSE INCIDENTS CAUSING INJURY TO PATIENT.

(B) THE DEVELOPMENT OF APPROPRIATE MEASURES TO MINIMIZE THE RISK OF INJURIES AND ADVERSE INCIDENTS TO PATIENTS, INCLUDING, BUT NOT LIMITED TO:

1. RISK MANAGEMENT AND RISK PREVENTION EDUCATION AND TRAINING OF ALL NONPHYSICIAN PERSONNEL AS FOLLOWS:

(I) SUCH EDUCATION AND TRAINING OF ALL NONPHYSICIAN PERSONNEL AS PART OF THEIR INITIAL ORIENTATION;

(II) AT LEAST ONE HOUR OF SUCH EDUCATION AND TRAINING ANNUALLY FOR ALL NONPHYSICIAN PERSONNEL OF THE LICENSED FACILITY WORKING IN CLINICAL AREAS AND PROVIDING PATIENT CARE;

(III) THE ANALYSIS OF PATIENT GRIEVANCES WHICH RELATE TO PATIENT CARE AND POSSIBLE CASES OF MISCONDUCT; AND

(IV) THE DEVELOPMENT AND IMPLEMENTATION OF AN INCIDENT REPORTING SYSTEM BASED UPON THE AFFIRMATIVE DUTY OF ALL HEALTH CARE PROVIDERS AND ALL AGENTS AND EMPLOYEES OF THE HOSPITAL OR FACILITY TO REPORT ADVERSE INCIDENTS TO THE RISK MANAGER.

2. THE ESTABLISHMENT OF THE POSITION OF INTERNAL RISK MANAGER.

S 30.07 INVESTIGATION AND REPORT OF MISCONDUCT.

THE INTERNAL RISK MANAGER OF EACH HOSPITAL OR FACILITY SHALL:

(A) NOTIFY THE FAMILY OR GUARDIAN OF THE VICTIM, IF A MINOR, THAT AN ALLEGATION OF SEXUAL MISCONDUCT OR OTHER CRIME HAS BEEN MADE AND THAT AN INVESTIGATION IS BEING CONDUCTED;

(B) INVESTIGATE EVERY ALLEGATION OF SEXUAL MISCONDUCT OR OTHER CRIME WHICH IS MADE AGAINST A MEMBER OF THE HOSPITAL'S OR FACILITY'S PERSONNEL OR A PATIENT, WHEN THE ALLEGATION IS THAT THE SEXUAL MISCONDUCT OR OTHER CRIME OCCURRED AT THE HOSPITAL OR FACILITY OR ON THE GROUNDS OF THE HOSPITAL OR FACILITY;

(C) REPORT EVERY ALLEGATION OF SEXUAL OR CRIMINAL MISCONDUCT TO THE ADMINISTRATOR OF THE HOSPITAL OR FACILITY; AND

(D) ANY EMPLOYEE WHO WITNESSES OR WHO POSSESSES ACTUAL KNOWLEDGE OF AN ACT THAT CONSTITUTES SEXUAL MISCONDUCT OR OTHER CRIME SHALL:

1. NOTIFY THE LOCAL POLICE; AND

2. NOTIFY THE INTERNAL RISK MANAGER AND THE HOSPITAL OR FACILITY ADMINISTRATOR.

S 30.09 FALSE ALLEGATIONS.

A PERSON WHO, WITH MALICE OR WITH INTENT TO DISCREDIT OR HARM A HOSPITAL OR FACILITY OR ANY PERSON, MAKES A FALSE ALLEGATION OF SEXUAL MISCONDUCT AGAINST A MEMBER OF A HOSPITAL'S OR FACILITY'S PERSONNEL IS

GUILTY OF A MISDEMEANOR, AND SHALL BE PUNISHED BY IMPRISONMENT FOR A PERIOD OF UP TO THREE MONTHS.

S 30.11 PENALTY.

IN ADDITION TO ANY PENALTY OTHERWISE PROVIDED BY LAW, THE DEPARTMENT MAY IMPOSE AN ADMINISTRATIVE FINE, NOT TO EXCEED FIVE THOUSAND DOLLARS, FOR ANY VIOLATION OF THE REPORTING REQUIREMENTS OF THIS ARTICLE.

S 30.13 RECORDS.

(A) EACH HOSPITAL OR FACILITY SHALL REPORT INCIDENTS OF SEXUAL MISCONDUCT OR OTHER CRIME TO THE DEPARTMENT PURSUANT TO ITS RULES THEREFOR.

(B) THE DEPARTMENT SHALL HAVE ACCESS TO ALL HOSPITAL OR FACILITY RECORDS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION. THE DEPARTMENT OR THE APPROPRIATE REGULATORY BODY SHALL MAKE AVAILABLE, UPON WRITTEN REQUEST BY A HEALTH CARE PROFESSIONAL AGAINST WHOM PROBABLE CAUSE HAS BEEN FOUND, ANY SUCH RECORDS WHICH FORM THE BASIS OF THE DETERMINATION OF PROBABLE CAUSE.

(C) THE DEPARTMENT SHALL REVIEW, AS PART OF ITS LICENSURE INSPECTION PROCESS, THE INTERNAL RISK MANAGEMENT PROGRAM AT EACH HOSPITAL OR FACILITY TO DETERMINE WHETHER OR NOT THE PROGRAM MEETS STANDARDS ESTABLISHED IN LAW AND RULES, WHETHER OR NOT THE PROGRAM IS BEING CONDUCTED IN A MANNER DESIGNED TO REDUCE ADVERSE INCIDENTS, AND WHETHER OR NOT THE PROGRAM IS APPROPRIATELY REPORTING INCIDENTS.

(D) IF THE DEPARTMENT, THROUGH ITS RECEIPT OF THE ANNUAL REPORTS PRESCRIBED IN THIS SECTION OR THROUGH ANY INVESTIGATION, HAS A REASONABLE BELIEF THAT CONDUCT BY A STAFF MEMBER OR EMPLOYEE OF A HOSPITAL OR FACILITY IS GROUNDS FOR DISCIPLINARY ACTION BY THE APPROPRIATE REGULATORY BODY, THE DEPARTMENT SHALL REPORT THIS FACT TO SUCH REGULATORY BODY.

(E) THE DEPARTMENT SHALL ANNUALLY PUBLISH A REPORT SUMMARIZING THE INFORMATION CONTAINED IN THE INCIDENT REPORTS SUBMITTED BY HOSPITALS OR FACILITIES. THIS REPORT MUST, AT A MINIMUM, SUMMARIZE:

1. ADVERSE AND SERIOUS INCIDENTS, BY CATEGORY OF REPORTED INCIDENT, AND BY TYPE OF EMPLOYEE INVOLVED.

2. DISCIPLINARY ACTIONS TAKEN AGAINST PROFESSIONALS, AND BY TYPE OF PROFESSIONAL INVOLVED.

3. SUMMARY OF INCIDENTS CAUSED BY ANOTHER PATIENT.

(F) A HOSPITAL OR FACILITY MAY PRESCRIBE THE CONTENT AND CUSTODY OF LIMITED ACCESS RECORDS WHICH THE HOSPITAL OR FACILITY MAY MAINTAIN ON ITS EMPLOYEES. SUCH RECORDS SHALL BE LIMITED TO INFORMATION REGARDING EVALUATIONS OF EMPLOYEE PERFORMANCE, INCLUDING RECORDS FORMING THE BASIS FOR EVALUATION AND SUBSEQUENT ACTIONS, AND SHALL BE OPEN TO INSPECTION ONLY BY THE EMPLOYEE AND BY OFFICIALS OF THE HOSPITAL OR FACILITY WHO ARE RESPONSIBLE FOR THE SUPERVISION OF THE EMPLOYEE. ANY HOSPITAL OR FACILITY RELEASING SUCH RECORDS PURSUANT TO THIS SECTION SHALL BE CONSIDERED TO BE ACTING IN GOOD FAITH AND MAY NOT BE HELD LIABLE FOR INFORMATION CONTAINED IN SUCH RECORDS, ABSENT A SHOWING THAT THE HOSPITAL OR FACILITY MALICIOUSLY FALSIFIED SUCH RECORDS.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law. Effective immediately the departments of health and mental hygiene are authorized to promulgate any and all rules and regulations and take any other measures necessary to implement the provisions of this act on its effective date.