

3906

2009-2010 Regular Sessions

I N S E N A T E

April 3, 2009

Introduced by Sen. DUANE -- 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 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-
20 IN TWENTY-FOUR HOURS OF COMPLETION. NOTHING IN THIS SECTION SHALL LIMIT
21 THE AUTHORITY OF THE DEPARTMENT TO CONDUCT AN INVESTIGATION OF INCIDENTS
22 OCCURRING IN HOME CARE SETTINGS.
23 4. THE COMMISSIONER SHALL REFER ANY INFORMATION IN A REPORT UNDER THIS
24 SECTION FOR APPROPRIATE ACTION TO (A) THE OFFICE OF PROFESSIONAL MEDICAL

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

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1 CONDUCT, IN THE CASE OF A PHYSICIAN, PHYSICIAN'S ASSISTANT OR SPECIAL-
2 IST'S ASSISTANT; (B) THE OFFICE OF THE PROFESSIONS OF THE EDUCATION
3 DEPARTMENT, IN THE CASE OF ANY OTHER HEALTH CARE PRACTITIONER; OR (C) IN
4 AN APPROPRIATE CASE, ANY OTHER GOVERNMENTAL AGENCY WITH APPROPRIATE
5 JURISDICTION WHICH COULD RECEIVE SUCH INFORMATION IF SUCH INFORMATION
6 HAD BEEN REPORTED TO THE DEPARTMENT PURSUANT TO SECTION TWENTY-EIGHT
7 HUNDRED FIVE-L OF THIS CHAPTER.

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

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

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

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

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

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

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

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

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

44 3. THE ADULT CARE FACILITIES SHALL CONDUCT AN INVESTIGATION OF ANY
45 REPORTABLE INCIDENT WITHIN THIRTY DAYS OF OBTAINING KNOWLEDGE OF ANY
46 INFORMATION WHICH REASONABLY APPEARS TO SHOW THAT A REPORTABLE INCIDENT
47 HAS OCCURRED, PROVIDED THAT, IF THE ADULT CARE FACILITY REASONABLY
48 EXPECTS THE INVESTIGATION TO EXTEND BEYOND THE THIRTY DAY PERIOD, THE
49 ADULT CARE FACILITY SHALL NOTIFY THE DEPARTMENT OF HEALTH OF THE
50 EXPECTED COMPLETION DATE OF THE INVESTIGATION. THE ADULT CARE FACILITY
51 SHALL PROVIDE TO THE DEPARTMENT OF HEALTH A COPY OF THE INVESTIGATION
52 REPORT WITHIN TWENTY-FOUR HOURS OF COMPLETION. NOTHING IN THIS SECTION
53 SHALL LIMIT THE AUTHORITY OF THE DEPARTMENT OF HEALTH TO CONDUCT AN
54 INVESTIGATION OF INCIDENTS OCCURRING IN ADULT CARE FACILITIES.

55 4. THE COMMISSIONER OF HEALTH SHALL REFER ANY INFORMATION IN A REPORT
56 UNDER THIS SECTION FOR APPROPRIATE ACTION TO (A) THE OFFICE OF PROFES-

1 SIONAL MEDICAL CONDUCT, IN THE CASE OF A PHYSICIAN, PHYSICIAN'S ASSIST-
2 ANT OR SPECIALIST'S ASSISTANT; (B) THE OFFICE OF THE PROFESSIONS OF THE
3 EDUCATION DEPARTMENT, IN THE CASE OF ANY OTHER HEALTH CARE PRACTITIONER;
4 OR (C) IN AN APPROPRIATE CASE, ANY OTHER GOVERNMENTAL AGENCY WITH APPRO-
5 PRIATE JURISDICTION WHICH COULD RECEIVE SUCH INFORMATION IF SUCH INFOR-
6 MATION HAD BEEN REPORTED TO THE DEPARTMENT OF HEALTH PURSUANT TO SECTION
7 TWENTY-EIGHT HUNDRED FIVE-L OF THE PUBLIC HEALTH LAW.

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

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

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

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

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