



# Senate

General Assembly

**File No. 595**

January Session, 2009

Senate Bill No. 1045

*Senate, April 9, 2009*

The Committee on Public Health reported through SEN. HARRIS of the 5th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

## **AN ACT CONCERNING RESPONSIBILITY FOR HOSPITAL "NEVER" EVENTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2010*) (a) As used in this  
2 section:

3 (1) "Hospital" means an institution which is primarily engaged in  
4 providing, by or under the supervision of physicians, to inpatients (A)  
5 diagnostic, surgical and therapeutic services for medical diagnosis,  
6 treatment and care of injured, disabled or sick persons, or (B) medical  
7 rehabilitation services for the rehabilitation of injured, disabled or sick  
8 persons, but excluding a residential care home, nursing home, rest  
9 home or alcohol or drug treatment facility, as defined in section 19a-  
10 490 of the general statutes;

11 (2) "Insurer" means any insurance company, health care center,  
12 corporation, Lloyd's insurer, fraternal benefit society or any other legal  
13 entity authorized to provide health care benefits in this state, including

14 benefits provided under health insurance, disability insurance,  
15 workers' compensation and automobile insurance or any person,  
16 partnership, association or legal entity that is self-insured and provides  
17 health care benefits to its employees, governmental entity that  
18 provides health care benefits to its employees, or governmental entity  
19 that provides medical benefits to Medicare or Medicaid, HUSKY Plan,  
20 Charter Oak Plan or state-administered general assistance recipients;

21 (3) "Outpatient surgical facility" (A) means any entity, individual,  
22 firm, partnership, corporation, limited liability company or association,  
23 other than a hospital, engaged in providing surgical services or  
24 diagnostic procedures for human health conditions that include the  
25 use of moderate or deep sedation, moderate or deep analgesia or  
26 general anesthesia, as such levels of anesthesia are defined from time  
27 to time by the American Society of Anesthesiologists, or by such other  
28 professional or accrediting entity recognized by the Department of  
29 Public Health; and (B) does not include a medical office owned and  
30 operated exclusively by a person or persons licensed pursuant to  
31 section 20-13 of the general statutes, provided such medical office: (i)  
32 Has no operating room or designated surgical area; (ii) bills no facility  
33 fees to third-party payors; (iii) administers no deep sedation or general  
34 anesthesia; (iv) performs only minor surgical procedures incidental to  
35 the work performed in such medical office of the physician or  
36 physicians that own and operate such medical office; and (v) uses only  
37 light or moderate sedation or analgesia in connection with such  
38 incidental minor surgical procedures; and

39 (4) "Serious disability" means (A) a physical or mental impairment  
40 that substantially limits one or more of the major life activities of an  
41 individual, such as seeing, hearing, speaking, walking or breathing, or  
42 a loss of bodily function, if such impairment or loss lasts more than  
43 seven days or is still present at the time of discharge from an inpatient  
44 health care facility, or (B) loss of a body part.

45 (b) No hospital or outpatient surgical facility may bill and no  
46 insurer shall be required to pay a hospital or outpatient surgical facility

47 for expenses incurred by any underlying procedure or service that  
48 directly results in any of the events specified in subdivisions (1) to (28),  
49 inclusive, of this subsection, or for any expenses incurred for a  
50 subsequent ameliorative or corrective service or procedure that is  
51 performed as a result of the events specified in said subdivisions (1) to  
52 (28):

53 (1) Surgery performed on a wrong body part that is not consistent  
54 with the documented informed consent for that patient. Such events  
55 do not include situations requiring prompt action that occur in the  
56 course of surgery or situations whose urgency precludes obtaining  
57 informed consent;

58 (2) Surgery performed on the wrong patient;

59 (3) The wrong surgical procedure performed on a patient that is not  
60 consistent with the documented informed consent for that patient.  
61 Such events do not include situations requiring prompt action that  
62 occur in the course of surgery or situations whose urgency precludes  
63 obtaining informed consent;

64 (4) Retention of a foreign object in a patient after surgery or other  
65 procedure, excluding objects intentionally implanted as part of a  
66 planned intervention and objects present prior to surgery that are  
67 intentionally retained;

68 (5) Death during or immediately after surgery of a normal, healthy  
69 patient who has no organic, physiologic, biochemical or psychiatric  
70 disturbance and for whom the pathologic processes for  
71 which the operation is to be performed are localized and do not entail  
72 a systemic disturbance;

73 (6) Patient death or serious disability associated with the use of  
74 contaminated drugs, devices or biologics provided by the hospital or  
75 outpatient surgical facility when the contamination is the result of  
76 generally detectable contaminants in drugs, devices or biologics  
77 regardless of the source of the contamination or the product;

78 (7) Patient death or serious disability associated with the use or  
79 function of a device in patient care in which the device is used or  
80 functions other than as intended. For purposes of this subdivision,  
81 "device" includes, but is not limited to, catheters, drains and other  
82 specialized tubes, infusion pumps and ventilators;

83 (8) Patient death or serious disability associated with intravascular  
84 air embolism that occurs while being cared for in a hospital or  
85 outpatient surgical facility, excluding deaths associated with  
86 neurosurgical procedures known to present a high risk of intravascular  
87 air embolism;

88 (9) An infant discharged to the wrong person;

89 (10) Patient death or serious disability associated with patient  
90 disappearance, excluding events involving adults who have decision-  
91 making capacity;

92 (11) Patient suicide or attempted suicide resulting in serious  
93 disability while being cared for in a hospital or outpatient surgical  
94 facility due to patient actions after admission to the hospital or  
95 outpatient surgical facility, excluding deaths resulting from self-  
96 inflicted injuries that were the reason for admission to the hospital or  
97 outpatient surgical facility;

98 (12) Patient death or serious disability associated with a medication  
99 error, including, but not limited to, errors involving the wrong drug,  
100 the wrong dose, the wrong patient, the wrong time, the wrong rate, the  
101 wrong preparation or the wrong route of administration, excluding  
102 reasonable differences in clinical judgment on drug selection and dose;

103 (13) Patient death or serious disability associated with a hemolytic  
104 reaction due to the administration of ABO or HLA-incompatible blood  
105 or blood products;

106 (14) Maternal death or serious disability associated with labor or  
107 delivery in a low-risk pregnancy while being cared for in a hospital or  
108 outpatient surgical facility, including events that occur not later than

109 forty-two days from the date of delivery and excluding deaths from  
110 pulmonary or amniotic fluid embolism, acute fatty liver of pregnancy,  
111 or cardiomyopathy;

112 (15) Patient death or serious disability directly related to  
113 hypoglycemia, the onset of which occurs while the patient is being  
114 cared for in a hospital or outpatient surgical facility;

115 (16) Death or serious disability, including kernicterus, associated  
116 with failure to identify and treat hyperbilirubinemia in neonates  
117 during the first twenty-eight days of life. For the purpose of this  
118 subdivision, "hyperbilirubinemia" means bilirubin levels greater than  
119 30 milligrams per deciliter;

120 (17) Stage 3 or 4 ulcers acquired after admission to a hospital or  
121 outpatient surgical facility, excluding progression from stage 2 to stage  
122 3 if stage 2 was recognized upon admission;

123 (18) Patient death or serious disability due to spinal manipulative  
124 therapy;

125 (19) Artificial insemination with the wrong donor sperm or wrong  
126 egg;

127 (20) Patient death or serious disability associated with an electric  
128 shock while being cared for in a hospital or outpatient surgical facility,  
129 excluding events involving planned treatments such as electric  
130 countershock;

131 (21) Any incident in which a line designated for oxygen or other gas  
132 to be delivered to a patient contains the wrong gas or is contaminated  
133 by toxic substances;

134 (22) Patient death or serious disability associated with a burn  
135 incurred from any source while being cared for in a hospital or  
136 outpatient surgical facility;

137 (23) Patient death or serious disability associated with a fall while

138 being cared for in a hospital or outpatient surgical facility;

139 (24) Patient death or serious disability associated with the use or  
140 lack of restraints or bedrails while being cared for in a hospital or  
141 outpatient surgical facility;

142 (25) Any instance of care ordered by or provided by someone  
143 impersonating a physician, nurse, pharmacist or other licensed health  
144 care provider;

145 (26) Abduction of a patient of any age;

146 (27) Sexual assault on a patient within or on the grounds of a  
147 hospital or outpatient surgical facility; and

148 (28) Death or significant injury of a patient or staff member resulting  
149 from a physical assault that occurs within or on the grounds of a  
150 hospital or outpatient surgical facility.

151 (c) No insured individual shall be required by a hospital or  
152 outpatient surgical facility to pay for such expenses that an insurer has  
153 refused to pay, pursuant to subsection (a) of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2010</i>	New section

**PH**      *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** See Below

**Municipal Impact:** None

**Explanation**

The bill forbids hospitals for billing for certain “Never Event” medical errors. Recently both the federal Medicare program and the state Medicaid program implemented similar billing prohibitions (although fewer never events are designated under these programs). Therefore, this bill would appear to primarily affect privately insured patients.

This change will result in an indeterminate revenue loss to the John Dempsey Hospital at the University of Connecticut Health Center. The extent of such loss would depend upon the number of applicable medical errors that are made in any given fiscal year. This cannot be known in advance. However, for purposes of illustration, in FY 08, a total of \$300,000 worth of such errors occurred at Dempsey. Of these, \$50,000 was attributable to privately insured patients.

**OLR Bill Analysis****SB 1045*****AN ACT CONCERNING RESPONSIBILITY FOR HOSPITAL  
"NEVER" EVENTS.*****SUMMARY:**

This bill prohibits hospitals and outpatient surgical facilities from billing for reimbursement from insurers for expenses incurred from (1) underlying procedures or services that directly result from specified events ("never" events) or (2) subsequent ameliorative or corrective services done as a result of such events.

The bill also prohibits a hospital or outpatient surgical facility from requiring an insured individual to pay for such expenses that the insurer has refused to pay.

EFFECTIVE DATE: Upon passage

**HOSPITALS, OUTPATIENT SURGICAL FACILITIES, AND INSURERS**

The bill defines a "hospital" as an institution primarily engaged in providing, by or under the supervision of physicians, to inpatients (1) diagnostic, surgical, and therapeutic services for medical diagnosis, treatment and care of injured, disabled, or sick persons, or (2) medical rehabilitation services for the rehabilitation of injured, disabled, or sick persons, but does not include a residential care home, nursing home, rest home, or alcohol or drug treatment facility.

An "outpatient surgical facility" is any entity, individual, firm, partnership, corporation, limited liability company or association, other than a hospital, providing surgical services or diagnostic procedures for human health conditions that include use of moderate or deep sedation, moderate or deep analgesia or general anesthesia, as

these levels are defined by the American Society of Anesthesiologists or by other professional or accrediting entity recognized by the Department of Public Health.

It does not include a medical office owned and operated exclusively by a licensed physician or surgeon if it (1) has no operating room or designated surgical area, (2) does not bill facility fees to third party payors, (3) does not administer deep sedation or general anesthesia, (4) performs only minor surgical procedures incidental to the work performed there, and (5) uses only light or moderate sedation or analgesia in connection with such incidental surgical procedures.

Under the bill, "insurer" means any insurance company, health care center (HMO), corporation, Lloyd's insurer, fraternal benefit society or other legal entity authorized to provide health care benefits in the state. This includes benefits provided under health, disability, worker's compensation and automobile insurance, or any person, partnership, association, or legal entity that is self-insured and provides health care benefits to its employees, governmental entity that provides such benefits to its employees, or government entity that provides medical benefits to Medicare, Medicaid, HUSKY plan, Charter Oak Plan, or state-administered general assistance recipients.

## **NEVER EVENTS**

The bill lists the following as "never" events:

1. surgery performed on the wrong body part that is not consistent with the documented informed consent for the patient other than situations requiring prompt action that occurs in the course of surgery or where urgency precludes obtaining informed consent;
2. surgery performed on the wrong patient;
3. the wrong surgical procedure performed on a patient not consistent with the patient's documented informed consent, excluding situations requiring prompt action as discussed

above;

4. unintended retention of a foreign object in a patient after surgery or another procedure, but excluding objects intentionally implanted as part of a planned intervention and objects present prior to surgery that are intentionally retained;
5. death during or immediately after surgery of a normal, healthy patient who has no organic, physiologic, biochemical, or psychiatric disturbance and for whom the pathologic processes for the operation are localized and do not involve a systemic disturbance;
6. patient death or serious disability caused by the use of contaminated drugs, devices or biologics provided by a hospital or ambulatory surgical center when the contamination is the result of generally detectable contaminants in drugs, devices, or biologics regardless of the contamination source;
7. patient death or serious disability caused by the use or function of a device in patient care in which the device is used for functions other than as intended (devices include catheters, drains and other specialized tubes, infusion pumps and ventilators);
8. patient death or serious disability caused by an intravascular air embolism that occurs while being cared for in a hospital or outpatient surgical facility but excluding deaths associated with neurosurgical procedures known to present a high risk of intravascular air embolism;
9. an infant's being discharged to the wrong person;
10. patient death or serious disability caused by a patient's disappearance, excluding events involving adults with decision-making capacity;
11. patient suicide or attempted suicide resulting in serious

- disability while being cared for in the health care facility due to patient actions after admission, excluding deaths resulting from self-inflicted injuries that were the reason for admission;
12. patient death or serious disability caused by a medication error such as an error involving the wrong drug dose, patient, time, rate, preparation or route of administration, but excluding reasonable differences in clinical judgment on drug selection and dose;
  13. patient death or serious disability caused by a hemolytic reaction due to the administration of incompatible blood or blood products;
  14. maternal death or serious disability caused by labor or delivery in a low-risk pregnancy, labor, and delivery while being cared for in the health care facility, including events that occur not later than 42 days from the delivery date, but excluding deaths from pulmonary or amniotic fluid embolism, acute fatty liver of pregnancy, or cardiomyopathy;
  15. patient death or serious disability caused by hypoglycemia, the onset of which occurs while the patient is being cared for in the health care facility;
  16. death or serious disability caused by failure to identify and treat hyperbilirubinemia (jaundice, bilirubin levels greater than 30 milligrams per deciliter) in newborns during the first 28 days of life;
  17. stage 3 or 4 pressure ulcers acquired after admission to the health care facility, but excluding progression from stage 2 to state 3 if stage 2 was recognized upon admission;
  18. patient death or serious disability due to spinal manipulative therapy;
  19. artificial insemination with the wrong donor sperm or wrong

egg;

20. patient death or serious disability caused by an electric shock while being cared for in the health care facility, but excluding events involving planned treatments such as electric countershock;
21. any incident in which a line designated for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by toxic substances;
22. patient death or serious disability caused by a burn incurred from any source while being cared for in the health care facility;
23. patient death caused by a fall by a patient who was or should have been identified as requiring precautions due to risk of falling while being cared for in the health care facility;
24. patient death or serious disability caused by the use of or lack of restraints or bedrails while being cared for in the health care facility;
25. any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist or other licensed health care provider;
26. abduction of a patient;
27. sexual assault of a patient within or on the grounds of the health care facility; and
28. death or significant injury of a patient resulting from a physical assault that occurs within or on the grounds of the health care facility.

For purposes of the bill and the never events list, "serious disability" means (1) a physical or mental impairment that substantially limits one or more of the major life activities of an individual, such as seeing, hearing, speaking, walking, or breathing, or

a loss of bodily functions, if the impairment or loss lasts more than seven days or is still present at the time of discharge from an inpatient health care facility or (2) loss of a body part.

## **BACKGROUND**

### ***Related Law***

PA 09-2, § 8 requires the Department of Social Services (DSS) commissioner to amend the Medicaid state plan to indicate that the approved inpatient hospital rates it pays for Medicaid-eligible patients are not applicable to hospital-acquired conditions that the Medicare program identifies as “nonpayable” (also called “never happen” events) in accordance with a 2005 federal law to ensure that hospitals are not paid for these conditions.

The federal Deficit Reduction Act of 2005 required the federal Medicare agency, beginning October 1, 2008, to limit payments to hospitals for preventable medical errors that result in serious consequences for patients. Since then the Medicare program identified selected costly or common conditions that it considered to be reasonably preventable by following evidence-based guidelines. For example, it includes a foreign object left in a patient's body following surgery. When this occurs, Medicare will not pay a hospital for any increased costs it incurs as a result of one of these events occurring (i.e., treating a condition that was not present when the patient was admitted to the hospital). Medicare continues to pay for the physician and other covered items or service needed to treat the hospital acquired condition. This takes effect April 1, 2009.

## **COMMITTEE ACTION**

Public Health Committee

Joint Favorable

Yea 28      Nay 1      (03/25/2009)