



General Assembly

January Session, 2009

Raised Bill No. 1045

LCO No. 3885

* SB01045PH 032509 *

Referred to Committee on Public Health

Introduced by:
(PH)

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.

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

PH *Joint Favorable*