



SPONSOR: Rep. B. Short & Sen. Hall-Long
Reps. Atkins, Barbieri, Gilligan, Heffernan, Hocker,
Hudson, Keeley, Longhurst, Mitchell, Osienski,
Schooley, Scott, D. Short; Sens. Blevins, Bushweller,
Henry, Sokola, Sorenson

HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 47

AN ACT TO AMEND TITLES 16 AND 24 OF THE DELAWARE CODE RELATING TO THE REGULATION,
INVESTIGATION AND INSPECTION OF UNSANITARY OR UNSAFE CONDITIONS IN FACILITIES WHERE
INVASIVE MEDICAL PROCEDURES ARE PERFORMED.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend §122(3), Title 16 of the Delaware Code by adding a new paragraph (y) as follows:

2 “(y) Establish standards with respect to safety and sanitary conditions of any facility defined in subparagraph 3.C.
3 and investigate and inspect any such facility for unsafe or unsanitary conditions upon receipt of a complaint by a patient in
4 accordance with this paragraph, or upon the occurrence of any adverse event in connection with any such facility. The
5 Department may share information hereunder with the Department of State, Division of Professional Regulation in
6 accordance with applicable law.

7 1. The Department may make and enforce such orders as it deems necessary to protect the health and
8 safety of the public hereunder. Without limitation of the foregoing, if the Department determines during the
9 course of any investigation or inspection that any facility hereunder poses a substantial risk to the health or safety
10 of any person, the Department may order that such facility be closed until such time as it no longer poses a
11 substantial risk.

12 2. No later than December 31, 2011, the Department shall adopt regulations to strengthen the oversight
13 of facilities hereunder. Such regulations may include procedures for the independent or outside accreditation of
14 such facilities.

15 3. For purposes of this paragraph:

16 A. ‘Adverse event’ means (i) the death or serious injury of any patient at a facility; (ii) a
17 reasonable determination by the Department that death or serious injury may result from any unsafe or
18 unsanitary condition at a facility; or (iii) the initiation of any criminal investigation arising out of or
19 relating to any diagnosis, treatment or other medical care at a facility.

20 B. 'Complaint' means a complaint filed by a patient in writing, in such format as the
21 Department shall require, within 60 days of diagnosis, treatment or other medical care at any facility
22 hereunder.

23 C. 'Facility' means a location at which any invasive medical procedure is performed, but shall
24 not include any hospital, as defined in 16 *Del.C.* §1001(2), or any freestanding birthing center,
25 freestanding surgical center or freestanding emergency center, as such terms are defined in paragraph (p)
26 hereunder.

27 D. 'Invasive medical procedure' means any medical procedure in which anesthesia or sedation
28 is or should be used. Without limitation of the foregoing, the term 'medical procedure' shall include
29 dental, podiatric, chiropractic and similar procedures.

30 E. 'Patient' means a person who has received diagnosis, treatment or other medical care at a
31 facility hereunder, as well as any parent, legal guardian or legal custodian of such person who is under
32 eighteen years of age or any legal guardian or legal custodian of such person who is an adult.”.

33 Section 2. Amend §1731(b)(21), Title 24 of the Delaware Code by striking the word “and” as it appears at the end
34 of paragraph (21).

35 Section 3. Amend §1731(b)(22), Title 24 of the Delaware Code by striking the period (“.”) at the end of paragraph
36 (22) and substituting in lieu thereof the language “; and”.

37 Section 4. Amend §1731(b), Title 24 of the Delaware Code by adding a new paragraph (23) as follows:

38 “(23) Maintaining a facility in which any invasive medical procedure is performed in an unsanitary or unsafe
39 condition. For purposes of this chapter, ‘invasive medical procedure’ means any medical procedure in which anesthesia or
40 sedation is or should be used. As used herein, ‘facility’ shall have the same meaning as defined in §122(3)(y)3.C. of Title
41 16.”.

42 Section 5. Amend §1731, Title 24 of the Delaware Code by adding a new subsection (g) as follows:

43 “(g) The Division shall have the authority to conduct inspections upon receipt of any complaint in connection with
44 subsection (b)(23) and, as applicable, refer such complaint to the Department of Health and Social Services pursuant to 16
45 *Del. C.* §122(3)(y). In connection herewith, the Division may share information with the Department of Health and Social
46 Services in accordance with applicable law.”

SYNOPSIS

This bill provides the Department of Health and Social Services with the explicit authority to investigate and inspect unsanitary or unsafe conditions in certain facilities where invasive medical procedures are performed. It also gives DHSS the authority to adopt regulations to strengthen oversight of facilities. In addition, it provides that the Department of State,

Division of Professional Regulation may investigate and inspect unsanitary and unsafe conditions maintained by individuals licensed by the Board of Medical Licensure and Discipline. Finally, the bill provides that maintenance of an unsanitary or unsafe condition is “unprofessional conduct” for purposes of the Board of Medical Licensure and Discipline.