



1
2
3 **IN THE GENERAL ASSEMBLY**
4 **STATE OF _____**

5
6 **An Act**

7
8 **To Foster Open Communication between Health Care Providers and Patients after**
9 **Unanticipated Health Care Outcomes**

10
11 Be it enacted by the People of the State of _____, represented in the
12 General Assembly:

13 **Section 1. Title.** This act shall be known as and may be cited as the “Act to
14 Foster Open Communication between Health Care Providers and Patients.”

15 **Section 2. Purpose.** The Legislature hereby finds and declares that:

- 16 a) Open communication between patients and health care providers is essential to
17 ensuring optimal health care outcomes;
- 18 b) Fear of lawsuits can impede such open communication between health care
19 providers and patients; and
- 20 c) Protecting statements by health care providers that express sympathy, condolence,
21 fault, or a general sense of benevolence to a patient after an unanticipated health
22 care outcome fosters open communication between the health care provider and
23 the patient.

24 **Section 3. Inadmissibility of Statements by Health Care Providers or their**
25 **Employees.**

- 26 a) This section applies to:

27 1) Any civil action brought by an alleged recipient of an unanticipated health
28 care outcome, their relative, or their representative, including but not
29 limited to arbitration, mediation, or other alternative dispute resolution
30 proceeding related to such civil action; or

31 2) Any proceeding conducted by a public or private entity that is related to
32 such unanticipated health care outcome, including but not limited to,
33 disciplinary proceedings, licensure proceedings, credentialing
34 proceedings, peer review proceedings, and certification or recertification
35 proceedings;

36 b) In any action or proceeding described in Subsection 3(a)(1) or 3(a)(2), any and
37 all statements, affirmations, gestures, writings, conduct, or other form of disclosure
38 expressing apology, sympathy, commiseration, condolence, compassion, error, fault,
39 regret, or a general sense of benevolence that are made by a health care provider or an
40 employee of a health care provider to the alleged recipient, a relative of the alleged
41 recipient, or a representative of the alleged recipient, and that relate to the discomfort,
42 pain, suffering, injury, or death of the alleged recipient as the result of the unanticipated
43 health care outcome shall be inadmissible as evidence of an admission of liability, an
44 admission against interest, or for any other purpose, including impeachment.

45 c) Offers to provide corrective or remedial treatment or gratuitous acts to help the
46 alleged recipient shall be inadmissible as well.

47 **Section 4. Definitions.** For purposes of this section, unless the context otherwise
48 requires:

49 a) "Relative" means an alleged recipient's spouse, parent, grandparent, stepfather,
50 stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents.
51 The term includes said relationships that are created as a result of adoption. In addition,
52 "relative" includes any person who has a family-type relationship with a recipient.

53 b) "Representative" means a legal guardian, attorney, person designated to make
54 decisions on behalf of a patient under a health power of attorney, or any person
55 recognized in law or custom as a patient's agent.

56 c) "Unanticipated health care outcome" means the outcome of a health treatment
57 or procedure that differs from an expected result.

58 **Section 5. Effective Date.** This Act shall become effective immediately upon
59 being enacted into law.

60 **Section 6. Severability.** If any provision of this Act is held by a court to be
61 invalid, such invalidity shall not affect the remaining provisions of this Act, and to this
62 end the provisions of this Act are hereby declared severable.

Adopted 11-2007