IN THE GENERAL ASSEMBLY
STATE OF ______________

An Act

To Foster Open Communication between Health Care Providers and Patients after
Unanticipated Health Care Outcomes

Be it enacted by the People of the State of ______________, represented in the
General Assembly:

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

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

a) Open communication between patients and health care providers is essential to
ensuring optimal health care outcomes;

b) Fear of lawsuits can impede such open communication between health care
providers and patients; and

c) Protecting statements by health care providers that express sympathy, condolence,
fault, or a general sense of benevolence to a patient after an unanticipated health
care outcome fosters open communication between the health care provider and
the patient.

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

a) This section applies to:
1) Any civil action brought by an alleged recipient of an unanticipated health care outcome, their relative, or their representative, including but not limited to arbitration, mediation, or other alternative dispute resolution proceeding related to such civil action; or

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

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

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

Section 4. Definitions. For purposes of this section, unless the context otherwise requires:
a) "Relative" means an alleged recipient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term includes said relationships that are created as a result of adoption. In addition, "relative" includes any person who has a family-type relationship with a recipient.

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

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

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

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

Adopted 11-2007