PRINTER'S NO. 1057

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1022 Session of 2021

INTRODUCED BY SCHEMEL, GLEIM, KAUFFMAN, KEEFER, MILLARD, MOUL, RYAN AND ZIMMERMAN, MARCH 26, 2021

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 26, 2021

AN ACT

Amending the act of March 20, 2002 (P.L.154, No.13), entitled "An act reforming the law on medical professional liability; providing for patient safety and reporting; establishing the Patient Safety Authority and the Patient Safety Trust Fund; abrogating regulations; providing for medical professional liability informed consent, damages, expert qualifications, limitations of actions and medical records; establishing the Interbranch Commission on Venue; providing for medical professional liability insurance; establishing the Medical Care Availability and Reduction of Error Fund; providing for medical professional liability claims; establishing the Joint Underwriting Association; regulating medical professional liability insurance; providing for medical licensure regulation; providing for administration; imposing penalties; and making repeals," in medical professional liability, further providing for informed consent.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 504 of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act, is amended to read:

Section 504. Informed consent.

(a) Duty of physicians.--Except in emergencies, a physician owes a duty<u>, which may be fulfilled by the physician or the physician's qualified practitioner as provided in subsection</u>

(b), to a patient to obtain the informed consent of the patient or the patient's authorized representative prior to conducting the following procedures:

(1) Performing surgery, including the related administration of anesthesia.

(2) Administering radiation or chemotherapy.

(3) Administering a blood transfusion.

(4) Inserting a surgical device or appliance.

(5) Administering an experimental medication, using an experimental device or using an approved medication or device in an experimental manner.

(b) [Description of procedure.--] Requirements to obtain informed consent.--

(1) Consent is informed if the patient or the patient's authorized representative has been given a description of a procedure set forth in subsection (a) and the risks and alternatives that a reasonably prudent patient would require to make an informed decision as to that procedure. [The]

(2) A physician may delegate the task of obtaining the informed consent of the physician's patient or the patient's authorized representative to a qualified practitioner for a procedure provided in subsection (a) performed by a physician or qualified practitioner.

(3) If a claim for failure to obtain informed consent is alleged, the physician or qualified practitioner shall be entitled to present evidence of the description of that procedure and those risks and alternatives that a physician or qualified practitioner, acting in accordance with accepted medical standards of medical practice, would provide.

(b.1) Information to obtain informed consent.--

(1) A physician or qualified practitioner performing a procedure enumerated under subsection (a) may rely on information provided by another qualified practitioner to obtain the informed consent of the patient or the patient's authorized representative.

(2) Information provided by another qualified practitioner under paragraph (1) shall be competent evidence in a proceeding in which it is alleged that a physician or qualified practitioner performing a procedure under subsection (a) failed to obtain informed consent.

(c) Expert testimony.--Expert testimony is required to determine whether the procedure constituted the type of procedure set forth in subsection (a) and to identify the risks of that procedure, the alternatives to that procedure and the risks of these alternatives.

(d) Liability.--

(1) [A physician is liable] Liability under this section for failure to obtain the informed consent may be established only if the patient proves that receiving such information would have been a substantial factor in the patient's decision whether to undergo a procedure set forth in subsection (a).

(2) [A physician may be held liable] Liability may be established under this section for failure to seek a patient's informed consent if the physician or qualified practitioner knowingly misrepresents to the patient [his or her] the professional credentials, training or experience[.] of the physician or qualified practitioner who performs the procedure.

(e) Human research exception.--The requirement under this

section shall be deemed satisfied if informed consent is obtained for human research conducted pursuant to approval by an institutional review board or similar entity in accordance with applicable Federal law and regulation.

(f) Applicability.--A physician or qualified practitioner performing a procedure enumerated under subsection (a) shall not be required to obtain a separate or new informed consent from the patient or the patient's authorized representative if informed consent was already obtained by the physician or another qualified practitioner with respect to the procedure.

(g) Construction.--Nothing in this section shall be construed to require a physician to delegate the authority to obtain informed consent to a qualified practitioner.

(h) Definition.--As used in this section, the term "qualified practitioner" means a health care practitioner as defined in section 103 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, who:

(1) has knowledge of the patient's condition and the procedure enumerated under subsection (a) to be conducted on the patient; and

(2) is acting under the supervision of, at the direction of or in collaboration with a physician.

The term shall include another physician and a physician participating in a medical residency or fellowship training program.

Section 2. This act shall apply to any action in which a final order has not been entered as of the effective date of this section.

Section 3. This act shall take effect in 60 days.