

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 684

S.P. 221

February 9, 2007

An Act To Permit Medical Providers an Opportunity To Express Regret for a Medical Error

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 14 MRSA §171** is enacted to read:

3 **§171. Expression of regret or apology by health care provider**

4 An expression of regret or apology or an explanation of how a medical error occurred
5 made by or on behalf of a health care provider that is provided within 14 days of when
6 the provider knew or should have known of the consequences of the error or made
7 pursuant to Title 22, chapter 422 does not constitute a legal admission of liability and is
8 inadmissible in a civil or administrative proceeding, including an arbitration or mediation
9 proceeding. A health care provider who makes an expression of regret or apology or an
10 explanation of how a medical error occurred within 14 days of when the provider knew or
11 should have known of the consequences of the error or pursuant to Title 22, chapter 422
12 may not be examined with respect to the expression of regret, apology or explanation in
13 any deposition or civil or administrative proceeding. For purposes of this section, "health
14 care provider" has the same meaning as in Title 5, section 19201, subsection 2.

15 **Sec. 2. 22 MRSA c. 422** is enacted to read:

16 **CHAPTER 422**

17 **MEDICAL ERRORS AND PATIENT SAFETY**

18 **§2150-D. Definitions**

19 As used in this chapter, unless the context indicates otherwise, the following terms
20 have the following meanings.

21 **1. Database.** "Database" means the patient safety database established by the
22 commissioner pursuant to section 2150-I.

23 **2. Health care facility.** "Health care facility" has the same meaning as in section
24 328, subsection 8.

25 **3. Health care provider.** "Health care provider" has the same meaning as in Title 5,
26 section 19201, subsection 2.

27 **4. Incident.** "Incident" means an event, occurrence or situation involving the
28 clinical care of a patient in a health care facility that could have injured the patient but did
29 not cause an unanticipated injury or require the delivery of additional health care services
30 to the patient.

31 **5. Medical error.** "Medical error" means an unexpected occurrence involving
32 death or serious physical or psychological injury or the risk of death or serious physical
33 or psychological injury or of which a recurrence may carry a significant chance of a
34 serious adverse outcome involving the clinical care of a patient in a health care facility.

1 6. Patient safety event. “Patient safety event” means an occurrence, incident or
2 process that contributes to or has the potential to contribute to a patient injury or degrades
3 the ability of a health care provider to provide the appropriate standard of care.

4 7. Patient safety officer. “Patient safety officer” means the person designated by a
5 program participant pursuant to section 2150-F, subsection 2, paragraph A, who is
6 responsible for ensuring that the conditions for participation in the program are met.

7 8. Program. “Program” means the Medical Error Disclosure and Compensation
8 Program established in section 2150-E.

9 9. Root cause analysis. “Root cause analysis” means an examination or
10 investigation of an occurrence, event or incident to determine if a preventable medical
11 error took place or if the standard of care was not followed and to identify the causal
12 factors that led to the occurrence, event or incident.

13 **§2150-E. Medical Error Disclosure and Compensation Program**

14 The Medical Error Disclosure and Compensation Program is established.

15 1. Administration. The commissioner shall develop and review applications and
16 determine eligibility for the program and administer the program to provide for the
17 confidential disclosure of medical errors in order to improve patient safety and health
18 care quality, reduce rates of preventable medical errors, ensure patient access to fair
19 compensation for medical injury due to medical error, negligence or malpractice and
20 reduce the cost of medical liability for doctors, health systems and other health care
21 providers.

22 2. Grants. The commissioner may award a grant to a program participant to further
23 the purposes of this section. In order to be eligible to receive a grant under this
24 subsection, a program participant must submit an application to the commissioner, who
25 shall designate the form, time and manner of the application. The commissioner may
26 award a grant under this subsection to a program participant for the following purposes:

27 A. To develop and implement a communication program to help a health care
28 provider disclose medical errors and other patient safety events to patients; or

29 B. To procure information technology products, including hardware, software and
30 support services, to facilitate the reporting, collection and analysis of patient safety
31 data required under this chapter.

32 **§2150-F. Program participation**

33 1. Program participants. The following may participate in the program:

34 A. A health care facility;

35 B. A health care provider; and

36 C. A provider of medical malpractice insurance for a health care provider, including:

37 (1) A mutual insurance company;

- 1 (2) A privately held or publicly traded liability insurance company;
- 2 (3) A self-insured hospital;
- 3 (4) A captive insurance company or provider covered by a captive insurance
- 4 company; and
- 5 (5) A risk retention group or any other alternative malpractice insurance
- 6 mechanism.

7 A program participant that is a medical liability insurer shall provide to all or a subset of
8 its insured an opportunity to participate in the program.

9 **2. Application requirements.** A health care provider or health care facility shall
10 submit a comprehensive plan to reduce the incidence of medical errors and improve
11 patient safety as part of its application for participation in the program.

12 **3. Participant requirements.** A program participant shall:

13 A. Designate a patient safety officer to ensure that the conditions of participation
14 established in this chapter are met; and

15 B. Allocate an amount not less than 50% of the projected annual savings for the first
16 year of participation in the program, not less than 40% of the actual savings reported
17 for the second year of participation in the program and not less than 30% of the actual
18 savings reported for the third and subsequent years of participation in the program to:

19 (1) In the case of a program participant that is a medical liability insurer, reduce
20 medical liability premiums for health care providers; or

21 (2) In the case of a program participant that is a health care facility or provider,
22 promote activities that result in the reduction of medical errors or that otherwise
23 improve patient safety.

24 **§2150-G. Reporting**

25 A program participant shall maintain and submit a report as follows.

26 **1. Patient safety officer.** A program participant shall submit to the patient safety
27 officer a report of:

28 A. An incident or occurrence involving a patient that is thought to be either a
29 medical error or a patient safety event; or

30 B. A legal action related to the medical liability of a health care facility or provider.

31 **2. Submission to database.** A program participant shall file a report submitted
32 under subsection 1 to the database in a standardized format as designed by the
33 commissioner.

34 **3. Root cause analysis.** A program participant shall perform a root cause analysis
35 with respect to a report submitted under subsection 1 within 90 days after the report is
36 submitted.

1 **4. Disclosure to patient.** If a patient is harmed or injured as a result of a medical
2 error or as a result of the relevant standard of care not being followed, a program
3 participant shall:

4 A. Disclose to the patient the report submitted under subsection 1, paragraph A
5 with respect to the patient not later than 5 business days after the completion of the
6 root cause analysis required under subsection 3; and

7 B. Upon the request of a patient who is the subject of a report submitted under
8 subsection 1, paragraph A, disclose to the patient information contained in the report.

9 **§2150-H. Negotiation**

10 At the time of disclosure to a patient pursuant to section 2150-G, subsection 4, a
11 program participant shall offer to negotiate compensation for the injury with the patient.

12 **1. Compensation; apology.** As part of negotiating under this section, a program
13 participant:

14 A. Shall offer to the patient compensation for the harm or injury pursuant to
15 subsection 2;

16 B. May, at the discretion of the health care facility or provider involved, apologize or
17 express regret to the patient for the harm or injury; and

18 C. Shall share when practicable any efforts the health care facility or provider will
19 undertake to prevent a recurrence of the harm or injury.

20 **2. Terms of negotiation.** If a patient elects to negotiate compensation with a
21 program participant pursuant to this section, the following rules apply.

22 A. The negotiations are confidential.

23 B. An apology or expression of regret by the program participant is confidential and
24 inadmissible in a civil or administrative proceeding pursuant to Title 14, section 171.

25 C. The program participant shall provide to the patient written notification of the
26 patient's right to legal counsel. This notification must include an affirmative
27 declaration that no action was taken to dissuade the patient from using counsel for the
28 negotiations.

29 D. The parties may agree to the use of a neutral 3rd-party mediator to facilitate the
30 negotiation.

31 E. If an agreement on compensation for the harm or injury is not reached within 6
32 months from the date of disclosure under section 2150-G, subsection 4:

33 (1) The patient may proceed directly to the judicial system for a resolution of the
34 issues involved; or

35 (2) The parties may sign an agreement to extend the negotiations for an
36 additional 3 months.

37 **3. Agreement.** Upon reaching an agreement for compensation under this section,
38 the program participant shall provide the negotiated compensation to the patient within an

1 agreed-upon time. The agreement must provide that, upon receipt by the patient of the
2 final payment of the accepted settlement agreed to under this section, further litigation
3 with respect to the underlying incident as described in the report and findings of the root
4 cause analysis under section 2150-G in a court of any jurisdiction is prohibited.

5 **§2150-I. Patient safety database**

6 The commissioner shall develop a patient safety database.

7 **1. Structure of the database.** The commissioner shall consult with health care
8 organizations, health care providers, patient safety organizations and health information
9 technology organizations with relevant expertise to:

10 A. Adopt a standardized patient safety taxonomy for the database;

11 B. Develop for the database necessary elements, common and consistent definitions
12 and a standardized electronic interface for the entry and processing of data by
13 program participants; and

14 C. Allow for the comprehensive collection and analysis of the patient safety data
15 submitted to the database pursuant to subsection 5.

16 **2. Confidentiality.** Information submitted to the database is privileged and
17 confidential and protected from disclosure pursuant to section 1711-C. Inclusion of
18 information in the database does not limit access to information otherwise discoverable.

19 **3. Access.** Access to the information contained within the database may be obtained
20 only through application to and approval by the commissioner.

21 **4. Entries.** An entry into the database must:

22 A. Be presented in a form and manner that deletes, omits or renders illegible any
23 information identifying a health care provider, patient or program participant;

24 B. Be in a standardized electronic format as determined by the commissioner; and

25 C. If related to a single occurrence or incident, be given a common identifier to link
26 entries of related data.

27 **5. Information required to be submitted.** A patient safety officer shall prepare and
28 enter into the database:

29 A. A report filed by a health care facility or provider under section 2150-G;

30 B. A summary of the findings of a root cause analysis filed pursuant to section
31 2150-G, subsection 3;

32 C. The terms of an agreement reached through a negotiation pursuant to section
33 2150-H;

34 D. The terms of an award given by a program participant to a patient for
35 compensation for harm or injury, whether provided through a negotiation under
36 section 2150-H or through any other means;

1 E. A disciplinary action taken against a health care facility or provider as a result of
2 involvement in an incident or occurrence involving a patient that is thought to be a
3 medical error or patient safety event; and

4 F. Any other information determined appropriate by the patient safety officer or the
5 commissioner.

6 **§2150-J. Rules**

7 The commissioner may adopt rules to carry out the purposes of this section. Rules
8 adopted pursuant to this section are major substantive rules pursuant to Title 5, chapter
9 375, subchapter 2-A.

10 **Sec. 3. Appropriations and allocations.** The following appropriations and
11 allocations are made.

12 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

13 **Medical Error Disclosure and Compensation Program**

14 Initiative: Provides funds to issue grants to participants in the Medical Error Disclosure
15 and Compensation Program to develop communication programs and procure
16 information technology products to assist health care providers in disclosing medical
17 errors and to improve patient safety.

18

19	GENERAL FUND	2007-08	2008-09
20	All Other	\$75,000	\$0
21		<hr/>	<hr/>
22	GENERAL FUND TOTAL	\$75,000	\$0

23 **SUMMARY**

24 This bill makes a one-time General Fund appropriation of \$75,000 in fiscal year
25 2007-08 for the Commissioner of Health and Human Services to issue grants to develop
26 communication programs and procure information technology products to assist health
27 care providers in disclosing medical errors and to improve patient safety. This bill also
28 makes privileged and immune from discovery an expression of regret or apology or an
29 explanation of how a medical error occurred made by a health care provider if it is
30 provided within 14 days of when the provider knew or should have known of the
31 consequences of the error. This bill further establishes the Medical Error Disclosure and
32 Compensation Program, which creates a system that allows health care providers,
33 facilities and medical malpractice insurers to disclose medical errors and negotiate
34 compensation with the subject patient without the threat of litigation, and directs the
35 Commissioner of Health and Human Services to create a patient safety database.