WEST VIRGINIA CODE CHAPTER 16 ARTICLE 39

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§16-39-1. Short title.

This article may be cited as the “Patient Safety Act of 2001.” The amendments made to this article during the 2021 Regular Session of the Legislature shall be known as “Mylissa Smith’s Law.”

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§16-39-2. Legislative findings and purpose.

[Repealed.]

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§16-39-3. Definitions.

For purposes of this article, the following words and phrases have the following meanings:

“Appropriate authority” means a federal, state, county, or municipal government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste or any member, officer, agent, representative, or supervisory employee thereof;

“Clergy” means an ordained clergy, such as a rabbi, priest, Islamic cleric, associate pastor, licensed minister, or lay minister serving under the direction of the congregation such as the Roman Catholic Eucharistic ministers;

“Commissioner” means the commissioner of the division of health;

“Direct patient care” means health care that provides for the physical, diagnostic, emotional, or rehabilitational needs of a patient or health care that involves examination, treatment, or preparation for diagnostic tests or procedures.

“Discrimination or retaliation” includes any threat, intimidation, discharge, or any adverse change in a health care worker’s position, location, compensation, benefits, privileges, or terms or conditions of employment that occurs as a result of a health care worker engaging in any action protected by this article.

“Good faith report” means a report of conduct defined in this article as wrongdoing or waste that is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.

“Health care entity” includes a health care facility, such as a hospital, clinic, nursing facility, or other provider of health care services.

“Health care facility” means:

(1) A hospital licensed pursuant to §16-5B-1 *et seq*. of this code;

(2) A nursing home licensed pursuant to §16-5C-1 *et seq*. of this code;

(3) An assisted living residence licensed pursuant to §16-5D-1 *et seq*. of this code; and

(4) Hospice licensed pursuant to §16-5I-1 *et seq*. of this code.

“Health care worker” means a person who provides direct patient care to patients of a health care entity and who is an employee of the health care entity, a subcontractor, or independent contractor for the health care entity, or an employee of the subcontractor or independent contractor. The term includes, but is not limited to, a nurse, nurse’s aide, laboratory technician, physician, intern, resident, physician assistant, physical therapist, or

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any other person who provides direct patient care.

“Patient” means a person living or receiving services as an inpatient at a healthcare facility.

“Public Health State of Emergency” means a federal or state declaration of a state of emergency arising from or relating to a public health crisis.

“Visitor” means any visitor from the patient’s family, or hospice visiting a patient in a healthcare facility.

“Waste” means the conduct, act, or omission by a health care entity that results in substantial abuse, misuse, destruction, or loss of funds, resources, or property belonging to a patient, a health care entity, or any federal or state program.

“Wrongdoing” means a violation of any law, rule, regulation, or generally recognized professional or clinical standard that relates to care, services, or conditions and which potentially endangers one or more patients or workers or the public.

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§16-39-4. Prohibition against discrimination or retaliation.

(a) No person may retaliate or discriminate in any manner against any health care worker because the worker, or any person acting on behalf of the worker:

(1) Makes a good faith report, or is about to report, verbally or in writing, to the health care entity or appropriate authority an instance of wrongdoing or waste.

(2) Advocated on behalf of a patient or patients with respect to the care, services or conditions of a health care entity;

(3) Initiated, cooperated or otherwise participated in any investigation or proceeding of any governmental entity relating to the care, services or conditions of a health care entity.

(b) A health care worker with respect to the conduct described is acting in good faith if the health care worker reasonably believes:

(1) That the information is true; and

(2) Constitutes waste or wrongdoing as defined in section three of this article.

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§16-39-5. Confidentiality of complaints to government agencies.

The identity of a health care worker who complains in good faith to a government agency or department about the quality of care, services or conditions of a health care entity or any waste or wrongdoing by the health care entity shall remain confidential and may not be disclosed by any person except upon the knowing written consent of the health care worker and except in the case in which there is imminent danger to health or public safety or an imminent violation of criminal law.

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§16-39-6. Enforcement.

(a) Any health care worker who believes that he or she has been retaliated or discriminated against in violation of section four of this article may file a civil action in any court of competent jurisdiction against the health care entity and the person believed to have violated section four of this article.

(b) A court, in rendering a judgment for a complainant in an action brought under this article, shall order, as the court considers appropriate, reinstatement of the health care worker, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court may also award the complainant, all or a portion of the costs of litigation, including reasonable attorneys fees and witness fees, if the court determines that the award is appropriate.

(c) An action may be brought under this subsection not later than two years after the date of the last event constituting the alleged violation for which the action is brought.

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§16-39-7. Notice.

Each health care entity shall post and keep posted, in conspicuous places on the premises of the health care entity where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the commissioner, setting forth excerpts from, or summaries of, the pertinent provisions of this article and information pertaining to the filing of a charge under section four of this article.

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§16-39-8. Visitation of a patient in a health care facility.

(a) During a declared public health state of emergency for a contagious disease, a health care facility shall permit visitation of a patient. If the patient's death is imminent, the health care facility shall allow visitation upon request at any time and frequency. In all other instances, the health care facility shall allow visitation once the patient is stable following a surgical procedure and, not less than once every five days: *Provided*, That visitation permitted by any health care entity may not be inconsistent with any applicable federal law, rule, policy, or guidance in effect for the same emergency.

(b) A visitor shall comply with the applicable procedures established by the health care facility.

(c) The health care facility may deny a visitor entry to the health care facility, may subject a visitor to expulsion from the facility, or may permanently revoke visitation rights to a visitor who does not comply with the applicable procedures established by the health care facility.

(d) A healthcare facility is not liable to a person visiting another person, nor to any other patient or resident of the health care facility, for any civil damages for injury or death resulting from or related to actual or alleged exposure during, or through the performance of, the visitation in compliance with this section, unless the health care facility failed to substantially comply with the applicable health and safety procedures established by the health care facility.

(e) Health care facilities shall provide patients adequate and lawful access to clergy so that patients can practice their religion by receiving clergy visitation at any reasonable time, as long as the visit does not disrupt clinical care: Provided, That if the health care facility limits the number of people able to visit the patient, the member of the clergy is not to be considered within that number.

(f) Clergy shall comply with the applicable visitation procedures established by the health care facility.

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