



Reprinted
February 26, 2007

SENATE BILL No. 207

DIGEST OF SB 207 (Updated February 26, 2007 3:25 pm - DI 104)

Citations Affected: IC 16-18; IC 16-40; IC 34-30; noncode.

Synopsis: Medical adverse event reporting. Requires the state department of health, subject to appropriation by the general assembly, to enter into an agreement with an agency to collect, analyze, interpret, and disseminate findings on a statewide basis until June 30, 2010, regarding patient safety. Makes it voluntary for certain persons to submit information to the agency and makes the reports and certain other information confidential and privileged. Requires the state department of health to: (1) study and develop quality indicators for infections; (2) publish the indicators; and (3) report to the health finance commission before September 1, 2007 and September 1, 2008, concerning the implementation of the program.

Effective: July 1, 2007.

Dillon, Hershman

January 8, 2007, read first time and referred to Committee on Health and Provider Services.
February 22, 2007, amended, reported favorably — Do Pass.
February 26, 2007, read second time, amended, ordered engrossed.

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SB 207—LS 6515/DI 77+



First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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SENATE BILL No. 207

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-10, AS AMENDED BY P.L.101-2006,
2 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 10. **(a) "Agency", for purposes of IC 16-40-5,**
4 **has the meaning set forth in IC 16-40-5-1.**

5 **(b) "Agency", for purposes of IC 16-41-37, has the meaning set**
6 **forth in IC 16-41-37-1.**

7 SECTION 2. IC 16-18-2-161 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 161. (a) "Health care
9 facility" includes:

10 (1) hospitals licensed under IC 16-21-2, private mental health
11 institutions licensed under IC 12-25, and tuberculosis hospitals
12 established under IC 16-11-1 (before its repeal);

13 (2) health facilities licensed under IC 16-28; and

14 (3) rehabilitation facilities and kidney disease treatment centers.

15 **(b) "Health care facility", for purposes of IC 16-28-13, has the**
16 **meaning set forth in IC 16-28-13-0.5.**

17 **(c) "Health care facility", for purposes of IC 16-40-5, has the**

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1 meaning set forth in IC 16-40-5-2.

2 SECTION 3. IC 16-40-5 IS ADDED TO THE INDIANA CODE AS
3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2007]:

5 **Chapter 5. Patient Safety Programs**

6 **Sec. 1. As used in this chapter, "agency" means:**

7 (1) an independent entity:

8 (A) that certifies that it meets the criteria under 42 U.S.C.
9 299b-24 as a patient safety organization and whose
10 certification has been accepted by the federal Department
11 of Health and Human Services; or

12 (B) that has been determined by the state department to
13 satisfy the criteria in 42 U.S.C. 299b-24 for certification as
14 a patient safety organization to a degree sufficient to
15 enable the entity to perform the activities of an agency
16 under this chapter; or

17 (2) an academic institution if:

18 (A) the academic institution is most qualified; or

19 (B) there is not an independent entity as described in
20 subdivision (1).

21 **Sec. 2. As used in this chapter, "health care facility" includes the**
22 **following:**

23 (1) An abortion clinic licensed under IC 16-21-2.

24 (2) An ambulatory outpatient surgical center licensed under
25 IC 16-21-2.

26 (3) A birthing center licensed under IC 16-21-2.

27 (4) A hospital licensed under IC 16-21-2.

28 (5) An office-based setting under IC 25-22.5-2-7(10) including
29 a facility, clinic, center, office or other setting where
30 procedures are performed that require moderate sedation or
31 analgesia, deep sedation or analgesia, general anesthesia, or
32 regional anesthesia.

33 **Sec. 3. (a) Subject to appropriation by the general assembly, the**
34 **state department shall enter into an agreement with an agency that**
35 **collects, analyzes, interprets, and disseminates findings on a**
36 **statewide basis regarding patient safety that are based on**
37 **confidential and privileged information voluntarily submitted to**
38 **the agency by:**

39 (1) a health care facility;

40 (2) a health care professional; or

41 (3) an individual.

42 (b) The state department shall ensure that the agency's board

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1 has sufficient procedures in place to allow the agency to fairly,
2 objectively, and accurately perform the duties set forth in the
3 agency's contract under this chapter with the state department.

4 (c) Information submitted by the agency to the state department
5 may not contain information that identifies the health care
6 provider or the patient.

7 (d) The agency shall analyze data, develop policies, and
8 disseminate and assist in the implementation of procedures that
9 enhance patient safety.

10 Sec. 4. A health care facility, a health care professional, or an
11 individual may file with the agency referred to in section 3 of this
12 chapter a report that alleges that a health care facility or a health
13 care professional, by an action taken or a failure to act, caused or
14 could have caused harm to a patient, including harm that resulted
15 from or could have resulted from:

- 16 (1) an adverse drug event; or
- 17 (2) an unexpected infection, including an infection that was
18 probably acquired in the health care facility.

19 Sec. 5. (a) Except as provided in subsections (d) and (e), the
20 following are confidential and privileged from use as evidence in an
21 administrative or a judicial proceeding:

- 22 (1) Oral or written information or reports given to the agency.
- 23 (2) Proceedings, records, deliberations, and findings of the
24 agency.

25 (b) The agency may not disclose to a person outside of the
26 agency the contents of:

- 27 (1) communications to the agency;
- 28 (2) agency records; or
- 29 (3) agency determinations;

30 that are generated, undertaken, or performed as a result of a
31 report described in section 4 of this chapter or under the
32 agreement described in section 3(a) of this chapter.

33 (c) A person who has participated in an agency proceeding or
34 deliberation may not disclose to a person outside of the agency:

- 35 (1) matters or opinions related to the agency's proceedings or
36 deliberations; or
- 37 (2) the contents of any confidential or privileged information
38 that the person obtains and that consists of information that
39 was not provided to the agency by the person.

40 However, the person may disclose information that the person
41 provided to the agency.

42 (d) The agency may disclose information concerning patient

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1 safety or quality of health care matters addressed in the agreement
2 described in section 3(a) of this chapter if the information does not
3 disclose any of the following:

4 (1) The identity of the health care facility, health care
5 provider, or patient.

6 (2) The identity of a person that provided information to the
7 agency.

8 (3) Information that could reasonably be expected to result in
9 the identification of a health care facility, health care
10 provider, patient, or person that has provided information to
11 the agency.

12 (e) Information or material that is confidential and privileged
13 under this section may be used as evidence in a criminal
14 proceeding only if the court first makes an in camera
15 determination that the information:

16 (1) is relevant to the criminal proceeding;

17 (2) is material to the proceeding; and

18 (3) is not reasonably available from another source.

19 **Sec. 6. The state department may adopt rules under IC 4-22-2**
20 **to administer this chapter.**

21 **Sec. 7. This chapter expires June 30, 2010.**

22 SECTION 4. IC 34-30-15-1 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) **Except as**
24 **provided in subsection (e)**, all proceedings of a peer review committee
25 are confidential.

26 (b) All communications to a peer review committee shall be
27 privileged communications.

28 (c) **Except as provided in subsection (e)**, neither the personnel of
29 a peer review committee nor any participant in a committee proceeding
30 shall reveal any content of:

31 (1) communications to;

32 (2) the records of; or

33 (3) the determination of;

34 a peer review committee outside of the peer review committee.

35 (d) However, the governing board of:

36 (1) a hospital;

37 (2) a professional health care organization;

38 (3) a preferred provider organization (including a preferred
39 provider arrangement or reimbursement agreement under
40 IC 27-8-11); or

41 (4) a health maintenance organization (as defined in
42 IC 27-13-1-19) or a limited service health maintenance

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1 organization (as defined in IC 27-13-34-4);
2 may disclose the final action taken with regard to a professional health
3 care provider without violating the provisions of this section.

4 **(e) Upon approval by the health care facility's governing body,**
5 **the peer review committee of a health care facility (as defined in**
6 **IC 16-40-5-2) may submit or disclose to the agency the following**
7 **for purposes of patient safety or quality of health care matters in**
8 **the agreement:**

- 9 (1) **Communications to the peer review committee.**
- 10 (2) **Peer review committee proceedings.**
- 11 (3) **Peer review committee records.**
- 12 (4) **Determinations by the peer review committee.**

13 **Except as provided in subsection (f), information and materials**
14 **disclosed to the agency under this subsection are confidential and**
15 **privileged, and the agency may not use or provide the information**
16 **or material to anyone for use as evidence in an administrative or**
17 **a judicial proceeding. However, the agency may issue a report that**
18 **is based upon information submitted or disclosed to the agency by**
19 **a peer review committee if the report or any other information**
20 **released does not disclose the identity of the health care facility,**
21 **health care provider, or patient.**

22 **(f) The governing body of a hospital may report, as part of the**
23 **hospital's quality assessment and improvement program, a**
24 **determination of a peer review committee of the hospital regarding**
25 **an adverse event concerning patient care to the state department**
26 **of health or another state agency without:**

- 27 (1) **violating this section; or**
- 28 (2) **waiving the confidentiality or privilege attached to the**
29 **communications, proceedings, records, or deliberations of the**
30 **peer review committee.**

31 **SECTION 5. [EFFECTIVE JULY 1, 2007] (a) Notwithstanding**
32 **IC 16-40-4, as part of the health care quality indicator data**
33 **program, the state department of health shall, before December 31,**
34 **2008:**

- 35 (1) **study and develop quality indicators for infections; and**
 - 36 (2) **publish the indicators for use by health care facilities.**
- 37 **(b) The state department of health shall report to the health**
38 **finance commission established under IC 2-5-23-3 not later than**
39 **September 1 of each year concerning the implementation of**
40 **IC 16-40-5, as added by this act.**
- 41 **(c) This SECTION expires July 1, 2009.**

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SENATE MOTION

Madam President: I move that Senator Hershman be added as second author of Senate Bill 207.

DILLON

 COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 207, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 4.

Page 1, line 8, delete "IC 16-40-5-2." and insert "**IC 16-40-5-1.**".

Page 1, delete lines 11 through 14.

Page 2, line 9, delete "IC 16-40-5-4." and insert "**IC 16-40-5-2.**".

Page 2, delete lines 14 through 17.

Page 2, line 18, delete "2." and insert "**1.**".

Page 2, delete lines 19 through 27, begin a new line block indented and insert:

(1) an independent entity that has been certified as a patient safety organization by the federal government; or

(2) an academic institution if:

(A) the academic institution is most qualified; or

(B) there is not a certified independent entity."

Page 2, line 28, delete "4." and insert "**2.**".

Page 2, line 28, delete "means" and insert "**includes**".

Page 2, delete lines 34 through 42.

Page 3, line 1, delete "(10)" and insert "**(4)**".

Page 3, delete lines 2 through 5.

Page 3, line 6, delete "5. The" and insert "**3. (a) Subject to appropriation by the general assembly, the**".

Page 3, line 7, delete "for the administration of this chapter." and insert "**that collects, analyzes, interprets, and disseminates findings on a statewide basis regarding patient safety that are based on confidential and privileged information voluntarily submitted to the agency by:**

(1) a health care facility;

(2) a health care professional; or

(3) an individual.

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(b) The state department shall ensure that the agency's board has sufficient procedures in place to allow the agency to fairly, objectively, and accurately perform the duties set forth in the agency's contract under this chapter with the state department.

(c) Information submitted by the agency to the state department may not contain information that identifies the health care provider or the patient.

(d) The agency shall analyze data, develop policies, and disseminate and assist in the implementation of procedures that enhance patient safety."

Page 3, delete lines 8 through 12.

Page 3, line 13, delete "(b)" and insert "Sec. 4."

Page 3, line 14, delete "5" and insert "3".

Page 3, line 22, delete "Sec. 7." and insert "Sec. 5."

Page 3, line 24, delete "6" and insert "4".

Page 3, line 34, delete "6" and insert "4".

Page 3, line 40, delete "6" and insert "4".

Page 4, delete lines 6 through 37.

Page 4, line 38, delete "12." and insert "6."

Page 5, line 22, delete "A health care facility (as defined in IC 16-40-5-4) may use a" and insert "A peer review committee of a health care facility (as defined in IC 16-40-5-2) may submit or disclose to the agency administering IC 16-40-5 the following for purposes of IC 16-40-5:

- (1) Communications to the peer review committee.
- (2) Peer review committee proceedings.
- (3) Peer review committee records.
- (4) Determinations by the peer review committee.

Except as provided in subsection (f), information and materials disclosed to the agency under this subsection are confidential and privileged, and the agency may not use or provide the information or material to anyone for use as evidence in an administrative or a civil proceeding.

(f) The agency may disclose information provided to the agency voluntarily under this chapter for use in a criminal proceeding if a court first makes an in camera determination that the information:

- (1) is relevant to the criminal proceeding;
- (2) is material to the proceeding; and
- (3) is not reasonably available from another source.

(g) The governing board of a hospital may report, as part of the hospital's quality assessment and improvement program, a

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determination of a peer review committee of the hospital regarding an adverse event concerning patient care to the state department of health or another state agency without violating this section."

Page 5, delete lines 23 through 38.

Page 5, line 42, delete "2007:" and insert "**2008:**".

Page 6, line 2, delete "where the state department of health determines" and insert "**publish the indicators for use by health care facilities.**".

Page 6, delete line 3.

Page 6, line 4, after "(b)" insert "**The state department of health shall report to the health finance commission established under IC 2-5-23-3 not later than September 1 of each year concerning the implementation of IC 16-40-5, as added by this act.**

(c)".

Page 6, line 4, delete "2008." and insert "**2009.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 207 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 11, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 207 be amended to read as follows:

Page 3, between lines 32 and 33, begin a new paragraph and insert: "**Sec. 7. This chapter expires June 30, 2010.**".

(Reference is to SB 207 as printed February 23, 2007.)

DILLON

SENATE MOTION

Madam President: I move that Senate Bill 207 be amended to read as follows:

Page 2, between lines 18 and 19, begin a new line block indented and insert:

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"(5) An office-based setting under IC 25-22.5-2-7(10) including a facility, clinic, center, office or other setting where procedures are performed that require moderate sedation or analgesia, deep sedation or analgesia, general anesthesia, or regional anesthesia."

(Reference is to SB 207 as printed February 23, 2007.)

DILLON

SENATE MOTION

Madam President: I move that Senate Bill 207 be amended to read as follows:

Page 2, line 7, delete "entity that has been certified as a patient" and insert **"entity:**

(A) that certifies that it meets the criteria under 42 U.S.C. 299b-24 as a patient safety organization and whose certification has been accepted by the federal Department of Health and Human Services; or

(B) that has been determined by the state department to satisfy the criteria in 42 U.S.C. 299b-24 for certification as a patient safety organization to a degree sufficient to enable the entity to perform the activities of an agency under this chapter; or"

Page 2, delete line 8.

Page 2, line 11, delete "a certified" and insert **"an"**.

Page 2, line 11, delete "." and insert **"as described in subdivision (1)."**

Page 2, line 40, delete "an incident" and insert **"a"**.

Page 3, line 5, delete "for information in an incident report that" and insert **"as provided in subsections (d) and (e), the following are confidential and privileged from use as evidence in an administrative or a judicial proceeding:**

- (1) Oral or written information or reports given to the agency.**
- (2) Proceedings, records, deliberations, and findings of the agency.**

(b) The agency may not disclose to a person outside of the agency the contents of:

- (1) communications to the agency;**
- (2) agency records; or**
- (3) agency determinations;**

that are generated, undertaken, or performed as a result of a

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report described in section 4 of this chapter or under the agreement described in section 3(a) of this chapter.

(c) A person who has participated in an agency proceeding or deliberation may not disclose to a person outside of the agency:

- (1) matters or opinions related to the agency's proceedings or deliberations; or
- (2) the contents of any confidential or privileged information that the person obtains and that consists of information that was not provided to the agency by the person.

However, the person may disclose information that the person provided to the agency.

(d) The agency may disclose information concerning patient safety or quality of health care matters addressed in the agreement described in section 3(a) of this chapter if the information does not disclose any of the following:

- (1) The identity of the health care facility, health care provider, or patient.
- (2) The identity of a person that provided information to the agency.
- (3) Information that could reasonably be expected to result in the identification of a health care facility, health care provider, patient, or person that has provided information to the agency.

(e) Information or material that is confidential and privileged under this section may be used as evidence in a criminal proceeding only if the court first makes an in camera determination that the information:

- (1) is relevant to the criminal proceeding;
- (2) is material to the proceeding; and
- (3) is not reasonably available from another source."

Page 3, delete lines 6 through 30.

Page 4, line 15, delete "A" and insert "**Upon approval by the health care facility's governing body, the**".

Page 4, line 17, delete "administering IC 16-40-5".

Page 4, line 17, delete "IC 16-40-5:" and insert "**patient safety or quality of health care matters in the agreement:**".

Page 4, line 26, delete "civil" and insert "**judicial**".

Page 4, line 26, after "proceeding." insert "**However, the agency may issue a report that is based upon information submitted or disclosed to the agency by a peer review committee if the report or any other information released does not disclose the identity of the health care facility, health care provider, or patient.**".

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Page 4, delete lines 27 through 33.

Page 4, line 34, delete "(g)" and insert "(f)".

Page 4, line 34, delete "board" and insert "**body**".

Page 4, line 38, after "without" insert ":

(1)".

Page 4, line 38, delete "." and insert "; or

(2) waiving the confidentiality or privilege attached to the communications, proceedings, records, or deliberations of the peer review committee.".

(Reference is to SB 207 as printed February 23, 2007.)

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