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.

SENATE ENROLLED ACT No. 207

AN ACT to amend the Indiana Code concerning health.

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

SECTION 1. IC 16-18-2-10, AS AMENDED BY SEA 526-2007, SECTION 167, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) "Agency", for purposes of IC 16-23.5, has the meaning set forth in IC 16-23.5-1-2.

(b) **"Agency", for purposes of IC 16-40-5, has the meaning set forth in IC 16-40-5-1.**

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

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

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

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

(3) rehabilitation facilities and kidney disease treatment centers.

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

(c) "Health care facility", for purposes of IC 16-40-5, has the meaning set forth in IC 16-40-5-2.

SECTION 3. IC 16-40-5 IS ADDED TO THE INDIANA CODE AS

A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 5. Patient Safety Programs

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

(1) an independent 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

(2) an academic institution if:

(A) the academic institution is most qualified; or

(B) there is not an independent entity as described in subdivision (1); and

the academic institution has entered an agreement with the state department under section 4 of this chapter.

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

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

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

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

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

(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, deep sedation, general anesthesia, or regional anesthesia.

Sec. 3. As used in this chapter, "personnel of the agency" means the agency's directors, officers, employees, representatives, agents, attorneys, investigators, assistants, clerks, staff, and any other individual or organization serving the agency in any capacity.

Sec. 4. (a) Subject to appropriation by the general assembly, the state department shall enter into an agreement with an agency 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.

(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 agreement 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.

Sec. 5. A health care facility, a health care professional, or an individual may file with the agency referred to in section 4 of this chapter a report that alleges that a health care facility or a health care professional, by an action taken or a failure to act, caused or could have caused harm to a patient, including harm that resulted from or could have resulted from:

(1) an adverse drug event; or

(2) an unexpected infection, including an infection that was probably acquired in the health care facility.

Sec. 6. (a) Except 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;

that are generated, undertaken, or performed as a result of a report described in section 5 of this chapter or under the agreement described in section 4(a) of this chapter.

(b) Neither the personnel of the agency nor any participant or witness in an agency proceeding or deliberation may disclose to a person outside of the agency the contents of:

(1) communications to the agency;

(2) agency records; or

(3) agency findings;

that are generated, undertaken, or performed as a result of a report described in section 5 of this chapter or under the agreement described in section 4(a) of this chapter.

(c) Information that is otherwise discoverable or admissible from original sources is not immune from discovery or use in any proceeding merely because it was presented during proceedings or

deliberations of the agency. Neither the personnel of the agency nor any participant or witness in any agency proceeding or deliberation may be prevented from testifying:

(1) as to matters within the individual's own knowledge; and

(2) in accordance with the other provisions of this chapter.

However, a witness cannot be questioned about testimony on other matters before the agency or about opinions formed by the witness as a result of the agency's proceedings or deliberations.

(d) The agency may disclose information concerning patient safety or quality of health care matters addressed in the agreement described in section 4(a) of this chapter, including information reported to the agency by a health care facility, a health care professional, or an individual, 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.

Sec. 7. The state department may adopt rules under IC 4-22-2 to administer this chapter.

Sec. 8. This chapter expires June 30, 2010.

SECTION 4. IC 34-30-15-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) All proceedings of a peer review committee are confidential.

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

(c) Neither the personnel of a peer review committee nor any participant in a committee proceeding shall reveal any content of:

(1) communications to;

(2) the records of; or

(3) the determination of;

a peer review committee outside of the peer review committee.

(d) However, the governing board of:

(1) a hospital;

(2) a professional health care organization;

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

(4) a health maintenance organization (as defined in IC 27-13-1-19) or a limited service health maintenance organization (as defined in IC 27-13-34-4);

may disclose the final action taken with regard to a professional health care provider without violating the provisions of this section.

(e) Upon approval by the health care facility's governing body, the peer review committee of a health care facility (as defined in IC 16-40-5-2) may submit or disclose to the agency (as defined in IC 16-40-5-1) the following for purposes of patient safety or quality of health care matters under 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.

Information and materials submitted or disclosed to the agency under this subsection are confidential and privileged from use as evidence in an administrative or judicial proceeding, and notwithstanding IC 16-40-5, the agency may not release the information or material outside the agency. However, the agency may issue a report that is based upon information or materials submitted or disclosed to the agency by a peer review committee if the report or any other information issued does not disclose the identity of the health care facility, health care provider, or patient. Information and materials may be submitted or disclosed to the agency under this subsection without violating this section or waiving the confidentiality and privilege attached to the communications, proceedings, records, determinations, or deliberations of the peer review committee.

(f) Upon its determination, the governing body of a hospital may report, as part of the hospital's quality assessment and improvement program, a 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:

(1) violating this section; or

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

SECTION 5. [EFFECTIVE JULY 1, 2007] **(a) Notwithstanding IC 16-40-4, the state department of health may, before December 31, 2008:**

(1) study and develop a list of quality indicators for infections that have been adopted or endorsed by a national consensus organization for voluntary reporting by health care facilities to the state department of health; and

(2) publish the indicators for use by health care facilities.

(b) 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) This SECTION expires July 1, 2009.

SECTION 6. [EFFECTIVE JULY 1, 2007] **Any information that is confidential under IC 16-40-4, as added by this act, remains confidential after the chapter expires or is repealed.**

President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____