

ASSEMBLY, No. 5945

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED NOVEMBER 18, 2019

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Requires psychiatric hospitals to provide certain notices and reports of major, moderate, and minor injuries occurring therein, and requires DOH to investigate causes of major and moderate injury.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning the reporting and investigation of injuries
2 occurring at psychiatric hospitals, amending and supplementing
3 P.L.2009, c.161, and amending P.L.1997, c.70.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.2009, c.161 (C.30:4-3.23) is amended to
9 read as follows:

10 1. As used in this act:

11 "Commissioner" means the Commissioner of **[Human Services]**
12 Health.

13 "Department" means the Department of **[Human Services]**
14 Health.

15 "Employee" means a person employed by the State to work at a
16 State psychiatric hospital, or a person employed by a private entity
17 under contract with the State to provide contracted services at a
18 State psychiatric hospital.

19 "Major injury" means an injury that requires treatment that can
20 only be performed at a general or special hospital licensed pursuant
21 to P.L.1971, c.136 (C.26:2H-1 et seq.), and which may additionally
22 include admission to the hospital for additional treatment or
23 observation.

24 "Minor injury" means an injury that does not constitute a major
25 injury or a moderate injury, and which can be treated with basic
26 first aid, and without the assistance of a health care professional.

27 "Moderate injury" means an injury that does not constitute a
28 major injury, but which requires treatment, beyond basic first aid,
29 that can only be performed by a health care professional at the
30 office of a physician, at a hospital emergency room, or by a
31 physician at a State psychiatric hospital.

32 "Physical assault" means an act upon a person that results in a
33 major **[or]**, moderate, or minor injury, and that occurs at a State
34 psychiatric hospital.

35 "State psychiatric hospital" means a psychiatric hospital listed in
36 R.S.30:1-7.

37 "Unexpected death" means a death that was not medically
38 anticipated, including, but not limited to suicide, homicide, or
39 unanticipated death due to an unforeseen medical complication or
40 other circumstance.

41 (cf: P.L.2009, c.161, s.1)

42

43 2. (New section) a. A State psychiatric hospital shall provide
44 notification, in accordance with the provisions of subsection b. of
45 this section, of any major injury, moderate injury, or minor injury

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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1 that is suffered by a patient, an employee, or any other person at the
2 psychiatric hospital.

3 b. Except as otherwise provided by subsection c. of this
4 section, the notification required under this section shall be
5 provided:

6 (1) to the commissioner, and, in the case of an injured patient, to
7 the guardian of the injured patient, or, if there is no guardian, to a
8 family member of the patient who has requested such notification,
9 unless the patient has expressly prohibited the family member from
10 receiving such notification;

11 (2) as soon as possible, but no later than two hours after the
12 occurrence of the injury, except when an extraordinary
13 circumstance prevents such notification, in which case, notification
14 shall be provided as soon as possible, but no later than eight hours
15 after the occurrence of the injury, and the psychiatric hospital shall
16 prepare a written, detailed explanation of the extraordinary
17 circumstance causing the delay, which explanation shall be
18 submitted to the persons identified in paragraph (1) of this
19 subsection, within 14 days of the incident; and

20 (3) through in-person means, or by telephone. Electronic means
21 may be used to engage in follow-up communications following the
22 initial notification.

23 c. Notwithstanding the provisions of this section to the
24 contrary, notice of injury shall not be required to be submitted to
25 the guardian or family member of an injured patient if that guardian
26 or family member has expressly stated, in a written document filed
27 with the psychiatric hospital, that the person does not want to
28 receive notification of injury pursuant to this section.

29
30 3. (New section) Within 48 hours after receipt of a report of an
31 incident involving major injury or moderate injury of a patient, an
32 employee, or any other person at a psychiatric hospital, the
33 commissioner shall send a staff member of the department, who is
34 not an employee of a State psychiatric hospital, to the location of
35 the reported incident, in order to verify the severity of the incident,
36 identify the factors that led to the injury, and determine whether the
37 injury has resulted from professional misconduct or, in the case of a
38 patient injury, has resulted from the abuse of the patient. If the
39 investigation indicates that the injury resulted from patient abuse or
40 professional misconduct, the commissioner shall take appropriate
41 action, as provided by subsection d. or e. of section 4 of P.L.1997,
42 c.70 (C.30:4-3.18), as applicable.

43
44 4. (New section) a. The owner or operator of a psychiatric
45 hospital that fails to comply with the reporting requirements of
46 section 2 of P.L. , c. (C.) (pending before the Legislature
47 as this bill), shall be liable to pay a civil penalty of not more than
48 \$5,000; and may also be required to pay an additional

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1 administrative penalty, in an amount determined by the
2 commissioner to be appropriate.

3 b. The penalties imposed pursuant to this section shall be
4 collected by the commissioner in a summary proceeding undertaken
5 in accordance with the "Penalty Enforcement Law of 1999,"
6 P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court and
7 municipal court shall have jurisdiction to enforce the provisions of
8 the "Penalty Enforcement Law of 1999" in connection with this
9 section.

10 c. Each violation of P.L. , c. (C.) (pending before the
11 Legislature as this bill) shall constitute a separate offense.

12

13 5. Section 2 of P.L.2009, c.161 (C.30:4-3.24) is amended to
14 read as follows:

15 2. a. The department shall establish a reporting system for
16 compiling information about the physical assaults, injuries, and
17 unexpected deaths that occur at State psychiatric hospitals, and shall
18 summarize the information in a report [which] that, at a minimum,
19 [shall] separately [identify] identifies, for each State psychiatric
20 hospital:

21 (1) the number of major [and], moderate, and minor injuries
22 occurring as a result of interactions among patients;

23 (2) the number of major [and], moderate, and minor injuries
24 occurring as a result of interactions between patients and [staff
25 members] employees of the hospital; [and]

26 (3) the number of major, moderate, and minor injuries occurring
27 as a result of interactions between patients and other persons,
28 including visitors, who are neither patients nor employees of the
29 hospital but are present therein;

30 (4) the number of major, moderate, and minor injuries occurring
31 as a result of interactions between employees and other persons,
32 including visitors, who are neither patients nor employees of the
33 hospital but are present therein; and

34 (5) the number of unexpected deaths.

35 b. The report prepared pursuant to this section shall not contain
36 any identifying information about a patient [or staff member] ,
37 employee, visitor, or any other person.

38 c. The report shall be considered a public or government record
39 under P.L.1963, c.73 (C.47:1A-1 et seq.) [or] and P.L.2001, c.404
40 (C.47:1A-5 et al.), and shall be posted on the official website of the
41 department and updated quarterly.

42 (cf: P.L.2009, c.161, s.2)

43

44 6. Section 4 of P.L.2009, c.161 (C.30:4-3.26) is amended to
45 read as follows:

46 4. Pursuant to the "Administrative Procedure Act," P.L.1968,
47 c.410 (C.52:14B-1 et seq.), the commissioner shall adopt rules and
48 regulations necessary to effectuate the purposes of [this act]

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1 P.L.2009, c.161 (C.30:4-3.23 et seq.), and P.L. , c. (C.)
2 (pending before the Legislature as this bill).

3 (cf: P.L.2009, c.161, s.4)

4

5 7. Section 1 of P.L.1997, c.70 (C.30:4-3.15) is amended to read
6 as follows:

7 1. **【For the purposes of this act】** As used in P.L.1997, c.70
8 (C.30:4-3.15 et seq.):

9 "Clinical treatment staff" means a physician, psychiatrist,
10 psychologist, physical therapist, or social worker licensed pursuant
11 to Title 45 of the Revised Statutes**【,】**; an occupational, recreation,
12 art, or music therapist; or a substance abuse counselor.

13 “Commissioner” means the Commissioner of Health.

14 “Department” means the Department of Health.

15 "Employee" means a person employed by the State to work at a
16 State psychiatric hospital, or a person employed by a private entity
17 under contract with the State to provide contracted services at a
18 State psychiatric hospital.

19 "Nursing direct care staff" means a Human Services Assistant, a
20 Human Services Technician, or a nurse licensed pursuant to Title 45
21 of the Revised Statutes.

22 "State psychiatric hospital" means a psychiatric hospital listed in
23 R.S.30:1-7.

24 (cf: P.L.1997, c.70, s.1)

25

26 8. Section 2 of P.L.1997, c.70 (C.30:4-3.16) is amended to read
27 as follows:

28 2. a. Any employee of a State psychiatric hospital, who, as a
29 result of information obtained in the course of **【his】** employment,
30 has reasonable cause to suspect or believe that a patient is being or
31 has been abused by any other employee of the hospital, by another
32 patient in the hospital, or by any other person, shall report the
33 information in a timely manner to the person who is designated by
34 the **【Commissioner of Human Services】** commissioner, pursuant to
35 **【this act】** section 4 of P.L.1997, c.70 (C.30:4-3.18), to receive the
36 report.

37 b. Any other person having reasonable cause to suspect or
38 believe that a patient is being or has been abused may report the
39 information to the person who is designated by the **【Commissioner**
40 **of 【Human Services】** commissioner, pursuant to **【this act】** section
41 4 of P.L.1997, c.70 (C.30:4-3.18), to receive the report.

42 c. The report shall contain the name of the patient, the name of
43 the psychiatric hospital and the unit to which the patient is assigned,
44 if known, information regarding the nature of the suspected abuse,
45 and any other information **【which】** that might be helpful in an
46 investigation of the case and the protection of the patient.

47 (cf: P.L.1997, c.70, s.2)

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1 9. Section 3 of P.L.1997, c.70 (C.30:4-3.17) is amended to read
2 as follows:

3 3. Any employee of a State psychiatric hospital who, as a result
4 of information obtained in the course of **【his】** employment, has
5 reasonable cause to suspect or believe that a clinical treatment staff
6 member or nursing direct care staff member working at the hospital
7 has or is engaging in professional misconduct shall report the
8 information to the person who is designated by the **【Commissioner**
9 **of Human Services】** commissioner, pursuant to **【this act】** section 4
10 of P.L.1997, c.70 (C.30:4-3.18), to receive the report.

11 The report shall contain the name of the staff member, the name
12 of the psychiatric hospital and the unit to which the staff member is
13 assigned, information regarding the nature of the suspected
14 professional misconduct, and any other information **【which】** that
15 might be helpful in an investigation of the case.

16 (cf: P.L.1997, c.70, s.3)

17

18 10. Section 4 of P.L.1997, c.70 (C.30:4-3.18) is amended to read
19 as follows:

20 4. The **【Commissioner of Human Services】** commissioner shall
21 establish a patient abuse and professional misconduct reporting
22 program for the State psychiatric hospitals.

23 a. The program shall provide, at a minimum, that State
24 psychiatric hospital employees are to be:

25 (1) trained in recognizing probable incidents of, or behavior that
26 constitutes, patient abuse or professional misconduct **【and other**
27 **abuse prevention activities pursuant to P.L. , c. (C.) (pending**
28 **before the Legislature as Senate Bill No.1543 or Assembly Bill No.**
29 **2427 of 1996)】**;

30 (2) informed of the duty to report **【the】** instances of suspected
31 patient abuse or professional misconduct, pursuant to **【this act】**
32 P.L.1997, c.70 (C.30:4-3.15 et seq.); and

33 (3) provided with the name and phone number of the person
34 who is designated by the commissioner **【who shall be notified】** ,
35 pursuant to subsection b. of this section, to receive reports of 【any】
36 suspected patient abuse 【or】 and professional misconduct.

37 b. The commissioner shall designate one or more employees of
38 the **【Department of Human Services】** department, who are not
39 employees of any of the State psychiatric hospitals, to **【serve as a**
40 **contact person for】** receive reports from employees of State
41 psychiatric hospitals **【to notify】** in the event that an employee:

42 (1) has reasonable cause to suspect that a patient is being or has
43 been abused by any other employee of the hospital, by another
44 patient in the hospital, or by any other person**【,】**; or

45 (2) has any information concerning suspected professional
46 misconduct by **【a】** clinical treatment staff or nursing direct care
47 staff **【member】** working at the hospital.

1 c. The **【designated】** contact person designated pursuant to
2 subsection b. of this section shall accept reports that are submitted
3 by phone, by mail, or by electronic transmission. The department’s
4 Internet website shall identify the phone number, email address, and
5 mailing address of the contact person to whom reports are to be
6 submitted. Upon receipt of a report of abuse or professional
7 misconduct, the designated contact person shall **【report all reported**
8 incidents or allegations of patient abuse and professional
9 misconduct**】 forward a copy of the report to the **【Director of the****
10 Division of Mental Health Services, the Commissioner of Human
11 Services, or their designees**】 commissioner or the commissioner’s**
12 designee. The designated contact person shall maintain a summary
13 record of all reports submitted pursuant to P.L.1997, c.70 (C.30:4-
14 3.15 et seq.). The summary record shall:

15 (1) indicate, by category, the nature of complaints that were
16 included in the incident reports received by the contact person;

17 (2) omit the personally identifying information of any person
18 who was involved in each incident or the reporting thereof;

19 (3) be posted on the department’s Internet website; and

20 (4) be regularly updated to incorporate the most current
21 reporting information.

22 d. The **【director】** commissioner shall **【cause a】** ensure the
23 prompt investigation of any report of patient abuse or professional
24 misconduct **【and notify the Commissioner of Human Services of**
25 the results of the investigation**】 that is forwarded thereto pursuant**
26 to subsection c. of this section.

27 **【d.】** e. **【The Director of the Division of Mental Health Services,**
28 **in a case in which**】** (1) Whenever the commissioner receives a
29 report of suspected professional misconduct **【is suspected】**,
30 pursuant to subsection c. of this section, or discovers evidence
31 indicating that professional misconduct either contributed to, or was
32 the sole cause of, an injury investigated pursuant to section 3 of
33 P.L. , c. (C.) (pending before the Legislature as this bill),
34 the commissioner shall promptly notify the appropriate State
35 licensing or certifying authority or professional board, if any,
36 **【having**】** that has jurisdiction over the **【person】** professional who
37 **【has been reported, of the report by the hospital employee and the**
38 **results of the director's investigation of the report**】** is alleged to
39 have engaged in the misconduct.******

40 **【e.】** The Director of the Division of Mental Health Services shall
41 promptly report all instances**】** (2) Whenever the commissioner
42 receives a report of suspected patient abuse, **【as determined by the**
43 director's investigation of a report by an employee of a State
44 psychiatric hospital,**】** pursuant to subsection c. of this section, or
45 discovers evidence indicating that patient abuse either contributed
46 to, or was the sole cause of, an injury investigated pursuant to
47 section 3 of P.L. , c. (C.) (pending before the Legislature

1 as this bill), the commissioner shall forward a copy of the report,
2 and all information and evidence obtained from the department's
3 investigation thereof, to the county prosecutor of the county in
4 which the hospital is located. **【The】** Any report submitted to the
5 county prosecutor, pursuant to this subsection, shall be prepared in
6 accordance with regulations adopted by the **【Commissioner of**
7 **Human Services】** commissioner, in consultation with the County
8 Prosecutors Association of New Jersey and the Attorney General.

9 f. Upon receipt of a report filed pursuant to subsection e. of
10 this section, the county prosecutor may conduct **【his own】** an
11 independent review of the 【suspected patient】 abuse allegations and
12 the associated evidence supporting or refuting the allegations, and
13 **【take】** may undertake any appropriate action in response to such
14 review.

15 g. Nothing in this section shall preclude the **【Human Services**
16 **police】** Department of Health from using its own enforcement
17 officers 【from conducting】 to conduct an investigation into
18 allegations of patient abuse or professional misconduct.

19 (cf: P.L.1997, c.70, s.4)

20

21 11. Section 5 of P.L.1997, c.70 (C.30:4-3.19) is amended to read
22 as follows:

23 5. a. The name of any person who reports an instance of
24 suspected patient abuse or professional misconduct, pursuant to
25 **【this act】** P.L.1997, c.70 (C.30:4-3.15 et seq.), shall not be
26 disclosed, unless the person who reported the abuse or misconduct
27 specifically requests the disclosure, or a judicial proceeding results
28 from the report.

29 b. A person who reports suspected abuse or professional
30 misconduct pursuant to **【this act】** P.L.1997, c.70 (C.30:4-3.15 et
31 seq.), or who testifies in any administrative or judicial proceeding
32 arising from **【the】** a report or prior testimony related to allegations
33 of abuse or professional misconduct, shall have immunity from any
34 civil or criminal liability **【on account of】** in association with the
35 report or testimony, unless the person has acted in bad faith or with
36 malicious purpose.

37 (cf: P.L.1997, c.70, s.5)

38

39 12. Section 6 of P.L.1997, c.70 (C.30:4-3.20) is amended to read
40 as follows:

41 6. Any person who is required to report suspected patient abuse
42 or professional misconduct, pursuant to **【this act】** P.L.1997, c.70
43 (C.30:4-3.15 et seq.), and who fails to make the requisite report,
44 shall be liable to a penalty of not more than \$5,000**【,** after that
45 person has completed the abuse prevention program pursuant to
46 paragraph (2) of subsection c. of section 2 of P.L. ,
47 c. (C.)(pending before the Legislature as Senate Bill No. 1543 or

1 Assembly Bill No. 2427 of 1996]. The penalty shall be collected
2 and enforced pursuant to Title 11A of the New Jersey Statutes.
3 Each violation of [this act] P.L.1997, c.70 (C.30:4-3.15 et seq.)
4 shall constitute a separate offense.
5 (cf: P.L.1997, c.70, s.6)

6
7 13. Section 7 of P.L.1997, c.70 (C.30:4-3.21) is amended to read
8 as follows:

9 7. The [Commissioner of Human Services] commissioner shall
10 adopt regulations, pursuant to the "Administrative Procedure Act,"
11 P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the purposes of
12 [this act] P.L.1997, c.70 (C.30:4-3.15 et seq.).
13 (cf: P.L.1997, c.70, s.7)

14
15 14. This act shall take effect immediately.

16
17
18 STATEMENT

19
20 This bill would require psychiatric hospitals in the State to notify
21 various parties about any major injury, moderate injury, or minor
22 injury that is suffered by a patient, an employee, or any other person
23 at the psychiatric hospital. The bill would further require the
24 Commissioner of Health to investigate any reports of moderate or
25 major injuries occurring in psychiatric hospitals, in order to
26 determine whether each such injury resulted from professional
27 misconduct or, in the case of a patient injury, resulted from the
28 abuse of the patient. While existing law does require psychiatric
29 hospitals to regularly report on the number of moderate and major
30 injuries that result from interactions occurring among patients or
31 between patients and employees, the law does not require the
32 reporting of minor injuries, or the reporting of any injuries that
33 result from interactions involving patients, employees, and other
34 persons, such as visitors, who are neither patients nor employees
35 but are present at the hospital. The existing law also provides only
36 for quarterly reporting of injury-related information, and it does not
37 provide for injuries to be immediately reported to any interested
38 parties, or investigated by departmental officials in any way.

39 This bill would modify the existing law to make it more
40 consistent with the injury notification and investigation
41 requirements that are currently applicable, under P.L.2017, c.238
42 (C.30:6D-9.1 et seq.), to community-based residential programs that
43 serve persons with developmental disabilities.

44 Under the bill's provisions, a psychiatric hospital will be
45 required to provide immediate notification of any major, moderate,
46 or minor injury suffered by any person at the hospital to the
47 commissioner. In the case of patient injury, immediate notification
48 of the injury is also to be provided to the guardian of the injured

1 patient, or, if there is no guardian, to a family member of the patient
2 who has requested such notification, unless the patient has
3 expressly prohibited the family member from receiving such
4 notification. A psychiatric hospital will not be required to provide
5 notice of patient injury to a patient's guardian or family member, if
6 that guardian or family member has expressly stated, in a written
7 document filed with the psychiatric hospital, that the person does
8 not want to receive notification of injury.

9 Any notification of patient injury would need to be provided as
10 soon as possible, but no later than two hours after the occurrence of
11 the injury, except when an extraordinary circumstance prevents
12 compliance with this requirement, in which case, notification is to
13 be provided as soon as possible, but no later than eight hours after
14 the occurrence of the injury. In any case where notice is delayed,
15 the psychiatric hospital will be required to prepare a written,
16 detailed explanation describing the extraordinary circumstance that
17 led to the delay. The notice of injury required by the bill is to be
18 provided through in-person means, or by telephone. However,
19 electronic means may be used to engage in follow-up
20 communications following the initial notification.

21 Within 48 hours after receipt of a report of an incident involving
22 major injury or moderate injury of a patient at a psychiatric
23 hospital, the commissioner will be required to send a Department of
24 Health employee, who is not an employee of a State psychiatric
25 hospital, to the location of the reported incident in order to verify
26 the incident's severity, identify the factors that led to the injury, and
27 make a determination as to whether the injury has resulted from
28 patient abuse or professional misconduct. If the investigation
29 indicates that the injury resulted from patient abuse or professional
30 misconduct, the commissioner will be required to forward the
31 incident report, and any associated evidence discovered through the
32 department's investigation, to the county prosecutor or the relevant
33 professional licensing board for disciplinary action, as provided by
34 the existing law that governs the reporting and investigation of
35 allegations of abuse and professional misconduct occurring in
36 psychiatric hospitals.

37 Any owner or operator of a psychiatric hospital that fails to
38 comply with the bill's injury reporting requirements will be liable to
39 pay a civil penalty of not more than \$5,000; and may also be
40 required to pay an additional administrative penalty, in an amount
41 determined by the commissioner to be appropriate. Each violation
42 of the bill's provisions would constitute a separate offense.

43 Under the bill, the department's quarterly injury report would
44 need to separately identify, for each State psychiatric hospital, the
45 number of unexpected deaths occurring in the hospital, and the
46 number of major, moderate, and minor injuries occurring as a result
47 of interactions: 1) among patients; 2) between patients and staff
48 members; 3) between patients and other persons, such as visitors,

1 who are neither patients nor employees of the hospital but are
2 present therein; and 4) between employees and other persons, such
3 as visitors, who are neither patients nor employees of the hospital
4 but are present therein.

5 The bill would also make minor substantive changes, and
6 technical and clarifying amendments, to the existing law at
7 P.L.1997, c.70 (C.30:4-3.15 et seq.), which relates to the reporting
8 and investigation of allegations of patient abuse and professional
9 misconduct occurring in psychiatric hospitals. These amendments
10 would clarify that it is the Department and Commissioner of Health
11 (and not the Department and Commissioner of Human Services)
12 that are now responsible for the implementation of that law, as
13 provided by Reorganization Plans 001-2017 (Christie) and 001-
14 2018 (Murphy). The amendments would also: 1) require the
15 department's designated contact person to accept reports of abuse or
16 professional misconduct that are submitted by phone, by mail, or by
17 electronic transmission; 2) require the department's Internet website
18 to identify the phone number, email address, and mailing address of
19 the contact person to whom reports of abuse and professional
20 misconduct are to be submitted; and 3) require the department's
21 designated contact person, upon receipt of a report of abuse or
22 professional misconduct, to forward a copy of the report to the
23 commissioner or the commissioner's designee. The designated
24 contact person will also be required to maintain a summary record
25 of all complaints submitted thereto. That summary record is to: 1)
26 indicate, by category, the nature of complaints that were included in
27 the complaints; 2) omit the personally identifying information of
28 any person who was involved in each incident or the reporting
29 thereof; 3) be posted on the department's Internet website; and 4)
30 be regularly updated to incorporate the most current reporting
31 information. The amendments would also make various technical
32 and clarifying changes to this existing law, and eliminate confusing
33 references to a bill that was introduced in 1996, but was never
34 enacted.