ASSEMBLY, No. 4385

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED JUNE 23, 2022

Sponsored by:
Assemblyman HERB CONAWAY, JR.
District 7 (Burlington)
Senator JOSEPH P. CRYAN
District 20 (Union)

Co-Sponsored by:
Assemblywoman McKnight

SYNOPSIS

Makes various revisions to law pertaining to electronic medical records and recording patients' demographic information.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 6/29/2022)

AN ACT concerning the recording of patients' demographic information and amending P.L.2021, c.454.

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

1. Section 1 of P.L.2021, c.454 (C.26:2H-5.36) is amended to read as follows:

1. a. Each general acute care hospital that collects data concerning patient race, ethnicity, sexual orientation, or gender identity for any reason shall implement an evidence-based cultural competency training program for all staff members employed by or working under the supervision of the general acute hospital who have direct contact with patients and are responsible for collecting race and ethnicity, sexual orientation, and gender identity information from patients. **[**The Department of Health shall identify an evidence-based cultural competency training tool that may be utilized by cultural competency training programs implemented by general acute hospitals pursuant to this section. The use of the department's approved training tool by a general acute hospital shall not preclude the hospital from utilizing additional or customized training tools in addition to or in lieu of the department's approved training tool.**]**

b. Each cultural competency training program implemented pursuant to subsection a. of this section shall include training on <u>how to collect race, ethnicity, sexual orientation, and gender identity in a culturally competent and sensitive manner. This may include</u> the following topics:

(1) common terminology for race and ethnicity, sexual orientation, and gender identity data;

(2) information on the relationship between patient health and collecting race and ethnicity, sexual orientation, and gender identity data;

(3) information on how race and ethnicity, sexual orientation, and gender identity data will be used;

(4) information on how to navigate discomfort in patients and staff when asking patients for their race and ethnicity, sexual orientation, and gender identity information; and

(5) information on how to create an inclusive and affirming environment for all patients.

c. Each staff member who is employed by or working under the supervision of the general acute care hospital, has direct contact with patients, and is responsible for collecting race and ethnicity, sexual orientation, and gender identity information from patients, shall:

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 <u>thus</u> is new matter.

(1) complete the cultural competency training program implemented pursuant to subsection a. of this section at such times and intervals as the hospital shall require; and

(2) complete a cultural competency refresher course at least once biennially if completion of the course is deemed necessary by the hospital.

(cf: P.L.2021, c.454, s.1)

2. Section 2 of P.L.2021, c.454 (C.45:9-42.46) is amended to read as follows:

2. a. (1) A clinical laboratory shall electronically record the race, ethnicity, sexual orientation, and gender identity of each patient who presents with a non-electronic order for testing at a clinical laboratory patient service center. If a clinical laboratory processes a specimen without the presence of a patient, the clinical laboratory shall not be responsible for recording and reporting the patient's gender identity, sexual orientation, and racial and ethnic information and may record "not provided" in lieu of the other selections provided under paragraphs (2) through (4) of this subsection.

(2) Race and ethnicity selections shall include: **[**African American, Alaska Native, American Indian, Asian, Black, Hispanic, Latino, more than one race, Native Hawaiian, Other Pacific Islander, White, and does not wish to disclose**]** Alaska Native or American Indian, non-Hispanic; Asian, non-Hispanic; Black or African American, non-Hispanic; Hispanic or Latino; Multiracial, non-Hispanic; Native Hawaiian or other Pacific Islander, non-Hispanic; other race, non-Hispanic; White, non-Hispanic; does not wish to disclose; and not provided.

(3) Sexual orientation selections shall include: bisexual; **[**do not know; heterosexual or**]** straight; **[**homosexual,**]** gay**[**,**]** or lesbian; something else; **[**and**]** does not wish to disclose; and not provided.

(4) Gender identity selections shall include: male, female, **[**transgender-female, transgender-male, non-binary, other, and**]** gender nonconforming, transgender male-to-female, transgender female-to-male, does not wish to disclose, and not provided.

b. Any health care related data that is required under State law to be reported by a clinical laboratory to **[**a local or State governmental entity**]** the Department of Health shall include any corresponding gender identity, sexual orientation, and racial and ethnic data recorded pursuant to this section, and shall be incorporated into the **[**corresponding**]** appropriate disease surveillance reporting system **[**of the local or State governmental entity**]**. The Commissioner of Health shall issue guidance concerning the health care related data that is subject to the requirements of this subsection.

c. A non-electronic specimen collection and analysis requisition form distributed by a clinical laboratory shall contain a section for the manual entry of the patient's racial, ethnic, sexual orientation, and gender identity information on the form.

d. Race and ethnicity, sexual orientation, and gender identity information that is required to be recorded or reported pursuant to this section shall be recorded or reported using a program that is compatible with the State's disease surveillance reporting system using such data fields as may be available or necessary in the version of Health Level Seven International recording and reporting standards or equivalent standards adopted by the laboratory, or using any other program or standard as may be designated by the Commissioner of Health that produces superior data collection and related benefits or that is otherwise in accordance with best practice.

e. The Commissioner of Health may modify, by regulation, the race, ethnicity, sexual orientation, and gender identity selections provided in subsection a. of this section as appropriate or pursuant to federal requirements.

(cf: P.L.2021, c.454, s.2)

3. Section 3 of P.L.2021, c.454 (C.45:9-42.47) is amended to read as follows:

3. Any electronic medical records or laboratory information management systems used by acute care hospitals and licensed clinical laboratories in this State or sold by a vendor of such systems in this State for use by acute care hospitals and licensed clinical laboratories, on or after the effective date of this act, shall be configured in a manner that prevents an authorized user from saving or storing a patient's demographic information into the electronic medical records or laboratory information management systems unless a selection for a patient's gender identity, sexual orientation, and racial and ethnic information is recorded. Nothing in this act shall prohibit a clinical laboratory from receiving, processing, or saving data related to specimens that are ordered or received from outside of this State. The gender identity, sexual orientation, and racial and ethnic information of a patient shall be included in laboratory orders generated by electronic medical record systems. The Department of Health may impose necessary corrective actions to achieve compliance with the provisions of this section, which may include, but need not be limited to, an attestation to be completed by an acute care hospital or a licensed clinical laboratory that: indicates specific steps that will be taken to achieve compliance within 120 days following the date of attestation; acknowledges legal obligations and penalties under this section; and provides relevant vendor information. A vendor of electronic medical records or laboratory information management systems that fails to comply with the provisions of this section shall

be liable to a civil penalty of up to $1,000 for each day during which the vendor's system is out of compliance. A civil penalty assessed pursuant to this section shall be collected by and in the name of the Department of Health in summary proceedings before a court of competent jurisdiction pursuant to the provisions of the "Penalty Enforcement Law of 1999," P.L.1999, c.174 (C.2A:58-10 et seq.).

(P.L.2021, c.454, s.3)

4. Section 5 of P.L.2021, c.454 (C.45:9-42.49) is amended to read as follows:

5. a. Each clinical laboratory shall implement an evidence-based cultural competency training program for all staff members employed by or working under the supervision of the clinical laboratory who have direct contact with patients and are responsible for collecting race and ethnicity, sexual orientation, and gender identity information from patients. **[**The Department of Health shall identify an evidence-based cultural competency training tool that may be utilized by cultural competency training programs implemented by clinical laboratories pursuant to this section. The use of the department's approved training tool by a clinical laboratory shall not preclude the clinical laboratory from utilizing additional or customized training tools in addition to or in lieu of the department's approved training tool.**]**

b. Each cultural competency training program implemented pursuant to subsection a. of this section shall include training on <u>how to collect race, ethnicity, sexual orientation, and gender identity in a culturally competent and sensitive manner. This may include</u> the following topics:

(1) common terminology for race and ethnicity, sexual orientation, and gender identity data;

(2) information on the relationship between patient health and collecting race and ethnicity, sexual orientation, and gender identity data;

(3) information on how race and ethnicity, sexual orientation, and gender identity data will be used;

(4) information on how to navigate discomfort in patients and staff when asking patients for their race and ethnicity, sexual orientation, and gender identity information; and

(5) information on how to create an inclusive and affirming environment for all patients.

c. Each staff member who is employed by or working under the supervision of the clinical laboratory, has direct contact with patients, and is responsible for collecting race and ethnicity, sexual orientation, and gender identity information from patients, shall:

(1) complete the cultural competency training program implemented pursuant to subsection a. of this section at such times and intervals as the clinical laboratory shall require; and

(2) complete a cultural competency refresher course at least once biennially if completion of the course is deemed necessary by the clinical laboratory.
(cf: P.L.2021, c.454, s.5)

5. Section 6 of P.L.2021, c.454 is amended to read as follows:

6. The Commissioner of Health shall adopt rules and regulations**[**, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),**]** as are necessary to effectuate the provisions of this act, which rules and regulations shall be effective immediately upon filing with the Office of Administrative Law for a period not to exceed 18 months, and shall, thereafter, be amended, adopted, or readopted in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)."
(cf: P.L.2021, c.454, s.6)

6. Section 7 of P.L.2021, c.454 is amended to read as follows:

7. This act shall take effect **[**180 days**]** 12 months after the date of enactment except that **[**sections 1 and 5**]** paragraphs (3) and (4) of subsection a. of section 2 of this act shall take effect **[**120 days**]** 18 months after the date of enactment.
(cf: P.L.2021, c.454, s.7)

7. This act shall take effect immediately and shall be retroactive to January 18, 2022.

STATEMENT

This bill makes various revisions to P.L.2021, c.454, which pertains to electronic medical records and recording patients' demographic information.

Specifically, the bill provides that the cultural competency training programs hospitals and clinical laboratories are required to implement under P.L.2021, c.454 are to include training on how to collect race, ethnicity, sexual orientation, and gender identity in a culturally competent and sensitive manner.

The bill removes a provision of current law requiring the Department of Health to identify an evidence-based cultural competency training tool that may be utilized by cultural competency training programs implemented by general acute hospitals and clinical laboratories. The bill revises questionnaire choices regarding demographics.

The bill provides that as an alternative to a requirement under P.L.2021, c.454 that hospitals and clinical laboratories record demographic information using a program that is compatible with

the State's disease surveillance reporting system using such data fields as may be available or necessary in the version of Health Level Seven International recording and reporting standards or equivalent standards adopted by the laboratory, the Commissioner of Health may designate the use of a different standard or program that produces superior data collection and related benefits.

Under the bill, the Department of Health may impose necessary corrective actions to achieve compliance with the provisions of with the provisions of section 3 of P.L.2021, c.454, (C.45:9-42.47), which may include, but need not be limited to, an attestation to be completed by an acute care hospital or a licensed clinical laboratory that: indicates specific steps that will be taken to achieve compliance within 120 days following the date of attestation; acknowledges legal obligations and penalties; and provides relevant vendor information.

This bill revises the section of P.L.2021, c.454 that requires the Commissioner of Health to adopt rules and regulations to implement P.L.2021, c.454, to provide that the rules and regulations will take effect immediately upon filing with the Office of Administrative Law and will remain in effect for 18 months. Thereafter, the rules and regulations may be amended, adopted, or readopted in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

The bill makes technical changes and various revisions to the effective date of P.L.2021, c.454.