

ASSEMBLY, No. 688

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

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

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 5/17/2021)

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.

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

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

1 regulations necessary to effectuate the purposes of **[this act]**
2 P.L.2009, c.161 (C.30:4-3.23 et seq.), and P.L. , c. (C.)
3 (pending before the Legislature as this bill).
4 (cf: P.L.2009, c.161, s.4)

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

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

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

14 "Commissioner" means the Commissioner of Health.

15 "Department" means the Department of Health.

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

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

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

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

26

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

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

38 b. Any other person having reasonable cause to suspect or
39 believe that a patient is being or has been abused may report the
40 information to the person who is designated by the **[Commissioner**
41 **of [Human Services]** commissioner, pursuant to **[this act]** section
42 4 of P.L.1997, c.70 (C.30:4-3.18), to receive the report.

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

1 investigation of the case and the protection of the patient.
2 (cf: P.L.1997, c.70, s.2)

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

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

14 The report shall contain the name of the staff member, the name
15 of the psychiatric hospital and the unit to which the staff member is
16 assigned, information regarding the nature of the suspected
17 professional misconduct, and any other information **【which】** that
18 might be helpful in an investigation of the case.
19 (cf: P.L.1997, c.70, s.3)

20
21 10. Section 4 of P.L.1997, c.70 (C.30:4-3.18) is amended to read
22 as follows:

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

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

28 (1) trained in recognizing probable incidents of, or behavior that
29 constitutes, patient abuse or professional misconduct **【and other**
30 **abuse prevention activities pursuant to P.L. , c. (C.) (pending**
31 **before the Legislature as Senate Bill No.1543 or Assembly Bill No.**
32 **2427 of 1996)】**;

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

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

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

1 (1) has reasonable cause to suspect that a patient is being or has
2 been abused by any other employee of the hospital, by another
3 patient in the hospital, or by any other person ~~[,]~~; or

4 (2) has any information concerning suspected professional
5 misconduct by ~~[a]~~ clinical treatment staff or nursing direct care
6 staff ~~[member]~~ working at the hospital.

7 c. The ~~[designated]~~ contact person designated pursuant to
8 subsection b. of this section shall accept reports that are submitted
9 by phone, by mail, or by electronic transmission. The department's
10 Internet website shall identify the phone number, email address, and
11 mailing address of the contact person to whom reports are to be
12 submitted. Upon receipt of a report of abuse or professional
13 misconduct, the designated contact person shall [report all reported
14 incidents or allegations of patient abuse and professional
15 misconduct] forward a copy of the report to the [Director of the
16 Division of Mental Health Services, the Commissioner of Human
17 Services, or their designees] commissioner or the commissioner's
18 designee. The designated contact person shall maintain a summary
19 record of all reports submitted pursuant to P.L.1997, c.70 (C.30:4-
20 3.15 et seq.). The summary record shall:

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

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

25 (3) be posted on the department's Internet website; and

26 (4) be regularly updated to incorporate the most current
27 reporting information.

28 d. The ~~[director]~~ commissioner shall ~~[cause a]~~ ensure the
29 prompt investigation of any report of patient abuse or professional
30 misconduct [and notify the Commissioner of Human Services of
31 the results of the investigation] that is forwarded thereto pursuant
32 to subsection c. of this section.

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

1 **[**e. The Director of the Division of Mental Health Services shall
2 promptly report all instances**]** (2) Whenever the commissioner
3 receives a report of suspected patient abuse, [as determined by the
4 director's investigation of a report by an employee of a State
5 psychiatric hospital,] pursuant to subsection c. of this section, or
6 discovers evidence indicating that patient abuse either contributed
7 to, or was the sole cause of, an injury investigated pursuant to
8 section 3 of P.L. , c. (C.) (pending before the Legislature
9 as this bill), the commissioner shall forward a copy of the report,
10 and all information and evidence obtained from the department's
11 investigation thereof, to the county prosecutor of the county in
12 which the hospital is located. **[The]** Any report submitted to the
13 county prosecutor, pursuant to this subsection, shall be prepared in
14 accordance with regulations adopted by the [Commissioner of
15 Human Services] commissioner, in consultation with the County
16 Prosecutors Association of New Jersey and the Attorney General.

17 f. Upon receipt of a report filed pursuant to subsection e. of
18 this section, the county prosecutor may conduct **[his own]** an
19 independent review of the **[suspected patient]** abuse allegations and
20 the associated evidence supporting or refuting the allegations, and
21 **[take]** may undertake any appropriate action in response to such
22 review.

23 g. Nothing in this section shall preclude the **[Human Services**
24 **police]** Department of Health from using its own enforcement
25 officers [from conducting] to conduct an investigation into
26 allegations of patient abuse or professional misconduct.

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

28

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

31 5. a. The name of any person who reports an instance of
32 suspected patient abuse or professional misconduct, pursuant to
33 **[this act]** P.L.1997, c.70 (C.30:4-3.15 et seq.), shall not be
34 disclosed, unless the person who reported the abuse or misconduct
35 specifically requests the disclosure, or a judicial proceeding results
36 from the report.

37 b. A person who reports suspected abuse or professional
38 misconduct pursuant to **[this act]** P.L.1997, c.70 (C.30:4-3.15 et
39 seq.), or who testifies in any administrative or judicial proceeding
40 arising from **[the]** a report or prior testimony related to allegations
41 of abuse or professional misconduct, shall have immunity from any
42 civil or criminal liability **[on account of]** in association with the
43 report or testimony, unless the person has acted in bad faith or with
44 malicious purpose.

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

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

3 6. Any person who is required to report suspected patient abuse
4 or professional misconduct, pursuant to **【this act】** P.L.1997, c.70
5 (C.30:4-3.15 et seq.), and who fails to make the requisite report,
6 shall be liable to a penalty of not more than \$5,000**【**, after that
7 person has completed the abuse prevention program pursuant to
8 paragraph (2) of subsection c. of section 2 of P.L. ,
9 c. (C.)(pending before the Legislature as Senate Bill No. 1543 or
10 Assembly Bill No. 2427 of 1996**】**. The penalty shall be collected
11 and enforced pursuant to Title 11A of the New Jersey Statutes.
12 Each violation of **【this act】** P.L.1997, c.70 (C.30:4-3.15 et seq.)
13 shall constitute a separate offense.
14 (cf: P.L.1997, c.70, s.6)

15

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

18 7. The **【Commissioner of Human Services】** commissioner shall
19 adopt regulations, pursuant to the "Administrative Procedure Act,"
20 P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the purposes of
21 **【this act】** P.L.1997, c.70 (C.30:4-3.15 et seq.).
22 (cf: P.L.1997, c.70, s.7)

23

24 14. This act shall take effect immediately.

25

26

27

STATEMENT

28

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

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

6 Under the bill's provisions, a psychiatric hospital will be
7 required to provide immediate notification of any major, moderate,
8 or minor injury suffered by any person at the hospital to the
9 commissioner. In the case of patient injury, immediate notification
10 of the injury is also to be provided to the guardian of the injured
11 patient, or, if there is no guardian, to a family member of the patient
12 who has requested such notification, unless the patient has
13 expressly prohibited the family member from receiving such
14 notification. A psychiatric hospital will not be required to provide
15 notice of patient injury to a patient's guardian or family member, if
16 that guardian or family member has expressly stated, in a written
17 document filed with the psychiatric hospital, that the person does
18 not want to receive notification of injury.

19 Any notification of patient injury would need to be provided as
20 soon as possible, but no later than two hours after the occurrence of
21 the injury, except when an extraordinary circumstance prevents
22 compliance with this requirement, in which case, notification is to
23 be provided as soon as possible, but no later than eight hours after
24 the occurrence of the injury. In any case where notice is delayed,
25 the psychiatric hospital will be required to prepare a written,
26 detailed explanation describing the extraordinary circumstance that
27 led to the delay. The notice of injury required by the bill is to be
28 provided through in-person means, or by telephone. However,
29 electronic means may be used to engage in follow-up
30 communications following the initial notification.

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

47 Any owner or operator of a psychiatric hospital that fails to
48 comply with the bill's injury reporting requirements will be liable to

1 pay a civil penalty of not more than \$5,000; and may also be
2 required to pay an additional administrative penalty, in an amount
3 determined by the commissioner to be appropriate. Each violation
4 of the bill's provisions would constitute a separate offense.

5 Under the bill, the department's quarterly injury report would
6 need to separately identify, for each State psychiatric hospital, the
7 number of unexpected deaths occurring in the hospital, and the
8 number of major, moderate, and minor injuries occurring as a result
9 of interactions: 1) among patients; 2) between patients and staff
10 members; 3) between patients and other persons, such as visitors,
11 who are neither patients nor employees of the hospital but are
12 present therein; and 4) between employees and other persons, such
13 as visitors, who are neither patients nor employees of the hospital
14 but are present therein.

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