

Legislation Text

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Amending Chapter 6-400 of The Philadelphia Code, to end the unlawful deportation of noncitizen patients by hospitals to the patients' countries of origin without their consent.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 6-400 of The Philadelphia Code is amended to read as follows:

TITLE 6. HEALTH CODE

* * *

CHAPTER 6-400. MISCELLANEOUS STANDARDS AND REQUIREMENTS

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§ 6-410. *Medical Deportation*

(1) *Definitions*

- (a) *Committee.* The Committee on Public Health and Human Resources, a standing committee of the Philadelphia City Council
- (b) *Competent.* Defined in accordance with 20 Pa. Cons. Stat. § 5422.
- (c) *Department.* The Philadelphia Department of Public Health
- (d) *Good Faith Effort.* Those efforts, the scope, intensity, and appropriateness of which are designed to create a meaningful process to achieve the objectives of this Chapter
- (e) *Health Care Facility.* Any facility providing clinically related health services, including, but not limited to, a general or special hospital, including psychiatric hospitals, rehabilitation hospitals, ambulatory surgical facilities, long-term care facilities, skilled nursing facilities, and cancer treatment facilities.
- (f) *Hospital.* A facility that operates within the city limits of Philadelphia that has an organized medical staff and provides equipment and services primarily for inpatient care to persons who require definitive diagnosis or treatment, or both, for injury, illness, pregnancy, or other disability.
- (g) *Incompetent.* Defined in accordance with 20 Pa. Cons. Stat. § 5422.

- (h) Medical Deportation. The forcible act of medical repatriation without consent, consideration of health insurance eligibility, or consideration of health risks to the patient.*
- (i) Medical Repatriation. The act of accomplishing or arranging for the physical removal of a noncitizen patient, who is injured or ill, from the United States to another country.*
- (j) Patient. Any person receiving medical treatment.*
- (k) Patient's Caregiver. A patient's caregiver may either be: (.1) a health care agent designated by a patient in an advance directive or health care power of attorney; or (.2) a court-appointed guardian. If neither are available, a patient's caregiver shall be a health care representative as defined by 20 Pa. Cons. Stat. § 5461(d) subject to the limitations and procedures in § 5461(g)-(k).*

(2) Regulation of Medical Repatriation.

- (a) No hospital in Philadelphia may engage in medical deportation, either directly or through a designated agent.*
- (b) Repatriation protocol. A hospital may medically repatriate a patient only if it has complied with the following protocol:*
 - (.1) obtained informed consent in accordance with subsection 6-410(3);*
 - (.2) ascertained health insurance eligibility in accordance with subsection 6-410(4);*
 - (.3) minimized health risks in accordance with subsection 6-410(5); and*
 - (.4) reported cases of medical repatriation to the Department and Committee in accordance with subsection 6-410(6).*

(3) Informed Consent.

- (a) A hospital must obtain a patient's written informed consent to medically repatriate a patient.*
- (b) To obtain a patient's written informed consent, a hospital must explain the medical repatriation process to the patient both verbally and through prepared written materials.*
- (c) These materials must include a notice of patient rights.*
- (d) For a patient who is not proficient in English, has limited working English proficiency, or has otherwise expressed a desire to communicate in a language other than English, the hospital shall ensure:*
 - (.1) the interpretation of all conversations pertaining to medical repatriation; and*
 - (.2) the translation of all documents pertaining to medical repatriation.*

(e) A patient's consent is valid only if the patient:

(.1) is competent;

(.2) is informed that they do not qualify for any alternative health insurance programs in accordance with subsection 6-410(4)(a), unless subsection 6-410(4)(b) applies;

(.3) is informed of the possible medical consequences of medical repatriation; and

(.4) affirmatively states that they were informed of the conditions listed in subsection 6-410(3)(e)(.2)-(.3).

(f) A hospital may not take any further steps for medical repatriation if a patient has refused to consent to the repatriation.

(g) If a patient is incompetent, then the hospital must:

(.1) wait until the patient is competent; or

(.2) if the patient is incompetent for an extended period, then the hospital must obtain written informed consent, in compliance with subsection 6-410(3)(a)-(d), from the patient's caregiver.

(4) Health Insurance Eligibility.

(a) Any hospital seeking to medically repatriate a patient shall make a timely, good faith effort to:

(.1) ascertain the patient's eligibility for any kind of programs to fund their care, including but not limited to local, state, and federal programs that cover the costs of emergency care, such as Emergency Medical Assistance; and

(.2) if the patient is eligible for any such coverage, assist the patient or the patient's caregiver to apply to enroll in the program.

(b) Exception. If either a competent patient or the patient's caregiver affirmatively states that they want the patient to be repatriated to their country of origin, the hospital need not engage in any activities in furtherance of subsection 6-410(4)(a).

(5) Minimization of Health Risks.

(a) Any hospital seeking to medically repatriate a patient shall minimize the risks of medical repatriation to the patient's health by ensuring that the receiving health care facility:

(.1) has available space;

(.2) has agreed to accept the patient;

(.3) has agreed to provide appropriate medical treatment; and

(.4) is capable of providing appropriate medical treatment.

(b) For any medically repatriated patient, the hospital must send all medical records pertaining to the patient's condition to the receiving health care facility.

(6) Reporting.

(a) Within 120 days of the effective date of this Chapter, each hospital must provide the Department with their written materials to comply with the repatriation protocol.

(.1) The Department will develop and provide a notice of patient rights to be included in such written materials. This notice will include information about a patient's rights under the repatriation protocol and the contact information of nonprofit immigration legal service providers in Philadelphia.

(b) For every patient that is under consideration for medical repatriation, the hospital shall produce a report. This report, in writing, must:

(.1) state the patient's condition and prognosis;

(.2) explain why medical repatriation is appropriate for the patient, including a description of each of the factors enumerated in subsection 6-410(5)(a);

(.3) explain the patient's ineligibility for programs to fund their care, unless covered by subsection 6-410(4)(b); and

(.4) include a copy of the patient's signature or the signature of the patient's caregiver indicating their informed consent.

(c) The hospital, prior to the patient's medical repatriation, must:

(.1) provide the patient with the report;

(.2) retain on file a copy of the report; and

(.3) submit a copy of the report to the Department.

(d) By January 31 of each year, any hospital that has medically repatriated any patients during the previous calendar year shall submit an annual summary report to the Committee.

(.1) This summary report will include all medically repatriated patients' data in the aggregate, which will include each medically repatriated patient's:

(.a) condition and prognosis;

(.b) gender and age;

(.c) country of repatriation; and

(.d) date of repatriation.

(.2) This summary report will be available, upon request to the Committee, to the public at large.

(7) Enforcement.

(a) Investigations Triggered by a Complaint.

(.1) Any person or organization may file a complaint with the Department to report any hospital that is suspected of violating the repatriation protocol.

(.2) Upon receiving a complaint alleging a violation of the repatriation protocol, the Department shall investigate the complaint and gather information regarding the suspected violation(s).

(b) Independent Investigations.

(.1) Independent of a complaint filed in accordance with subsection 6- 410(7)(a)(.2), the Department may investigate and gather information regarding any suspected violation of the repatriation protocol. Hospitals shall provide the Department with access to their records to monitor compliance with this Chapter. (.2) The Department may question any hospital staff involved in the suspected violation of the repatriation protocol and investigate all facts, conditions, practices, or matters that it deems necessary or appropriate to determine whether a hospital has violated the repatriation protocol.

(c) Fines and Probation.

(.1) The Department shall have the power to impose fines and remedies for violation of the repatriation protocol.

(.a) Each violation of each subsection of this repatriation protocol shall constitute a separate Class III offense and the hospital shall be subject to the fines set forth in subsection 1-109(3) of the Philadelphia Code.

(.2) The Department shall also order remedies for the patient, including restitution for physical, emotional, or economic loss arising from the violation.

(.3) The Department shall have the power to apply through the Philadelphia Law Department, to any Court of Common Pleas, or the County Court of Philadelphia for appropriate relief at law or in equity against any hospital, or against any person who knowingly violates this Chapter.

(.4) The Department shall have the power to place any hospital that violates the repatriation protocol on probation.

(.a) Any hospital that violates the repatriation protocol shall be placed on probation for 2 years, during which it must report efforts to

implement the required repatriation protocol and the materials indicated in subsections 6-410(3)-(6) to the Department and Committee 2 times per year.

(b) The Department may implement additional non monetary probationary requirements for hospitals that violate any provision of this Chapter.

(d) Right of Action; Damages; Attorney's Fees and Costs.

(.1) Any hospital that violates any provision of this Chapter shall be liable to the affected patient for damages that arise from such a violation.

(.2) An action to recover the liability may be maintained against any hospital in any state court of competent jurisdiction by any affected patient. The patient may sue for damages, including, but not limited to physical, emotional, or economic damages arising from the violation.

(.3) In addition to any judgment awarded to the plaintiff, the court in such action shall allow costs and reasonable attorney's fees to be paid by the defendant.

(8) If any clause, sentence, paragraph or part of this Section, or the application thereof to any person or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Section nor the application of such clause, sentence, paragraph or part to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that this Section would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from their coverage.

SECTION 2. This Ordinance shall take effect immediately.