

ASSEMBLY, No. 4385

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED JUNE 23, 2022

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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

3

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

6

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

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

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

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

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

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

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

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

41 c. Each staff member who is employed by or working under the
42 supervision of the general acute care hospital, has direct contact
43 with patients, and is responsible for collecting race and ethnicity,
44 sexual orientation, and gender identity information from patients,
45 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 thus is new matter.

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

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

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

8

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

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

21 (2) Race and ethnicity selections shall include: **【African**
22 **American, Alaska Native, American Indian, Asian, Black, Hispanic,**
23 **Latino, more than one race, Native Hawaiian, Other Pacific**
24 **Islander, White, and does not wish to disclose】** Alaska Native or
25 American Indian, non-Hispanic; Asian, non-Hispanic; Black or
26 African American, non-Hispanic; Hispanic or Latino; Multiracial,
27 non-Hispanic; Native Hawaiian or other Pacific Islander, non-
28 Hispanic; other race, non-Hispanic; White, non-Hispanic; does not
29 wish to disclose; and not provided.

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

33 (4) Gender identity selections shall include: male, female,
34 **【transgender-female, transgender-male, non-binary, other, and】**
35 gender nonconforming, transgender male-to-female, transgender
36 female-to-male, does not wish to disclose, and not provided.

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

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

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

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

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

21
22 3. Section 3 of P.L.2021, c.454 (C.45:9-42.47) is amended to
23 read as follows:

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

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

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

9

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

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

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

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

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

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

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

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

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

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

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

4 (cf: P.L.2021, c.454, s.5)

5

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

7 6. The Commissioner of Health shall adopt rules and
8 regulations, in accordance with the “Administrative Procedure
9 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary to
10 effectuate the provisions of this act, which rules and regulations
11 shall be effective immediately upon filing with the Office of
12 Administrative Law for a period not to exceed 18 months, and shall,
13 thereafter, be amended, adopted, or readopted in accordance with
14 the provisions of the "Administrative Procedure Act," P.L.1968,
15 c.410 (C.52:14B-1 et seq.).”

16 (cf: P.L.2021, c.454, s.6)

17

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

19 7. This act shall take effect **180 days** 12 months after the date
20 of enactment except that **sections 1 and 5** paragraphs (3) and (4)
21 of subsection a. of section 2 of this act shall take effect **120 days**
22 18 months after the date of enactment.

23 (cf: P.L.2021, c.454, s.7)

24

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

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28

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STATEMENT

30

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

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

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

45 The bill provides that as an alternative to a requirement under
46 P.L.2021, c.454 that hospitals and clinical laboratories record
47 demographic information using a program that is compatible with
48 the State's disease surveillance reporting system using such data

1 fields as may be available or necessary in the version of Health
2 Level Seven International recording and reporting standards or
3 equivalent standards adopted by the laboratory, the Commissioner
4 of Health may designate the use of a different standard or program
5 that produces superior data collection and related benefits.

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

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

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