

May 24, 2021

TO: Members of the Pennsylvania House Health Committee

FROM: The Hospital and Healthsystem Association of Pennsylvania and the Pennsylvania Medical Society

SUBJECT: Support Senate Bill 425

On behalf of The Hospital & Health System Association of Pennsylvania (HAP) and the Pennsylvania Medical Society (PAMED), this memo requests your **support of Senate Bill 425**, sponsored by Senator Gordner.

The legislation provides a critical legislative clarification to address a Pennsylvania Supreme Court's 2017 interpretation of the Medical Care Availability and Reduction of Error (MCare) Act, under *Shinal v Toms*, regarding a physician's ability to delegate the duty to obtain the informed consent of a patient prior to specified procedures.

The ruling precludes health care facilities and physicians from utilizing qualified practitioners in the informed consent process, which means that qualified staff can no longer assist with providing information, answering questions, or following up with patients prior to surgical procedures for fear of legal liability. This ruling inhibits much of the team-based care that facilities and physicians rely on in an ever-demanding health care world and ignores the realities of present-day health care. It further takes away a physician's medical expertise and judgment in determining how best to serve his or her patients.

This legislation does not remove the accountability of the physician to ensure that patients are fully informed prior to a procedure. Rather, it provides them with the ability to determine when to employ the assistance of other qualified practitioners within a framework that still ensures patients are protected and have access to information they need to make informed decisions about very important health care matters.

Senate Bill 425 also:

- Allows health care facilities and physicians to develop policies and procedures regarding informed consent when qualified practitioners other than physicians may obtain informed consent
- Allows physicians and other qualified practitioners to rely on information provided by another qualified practitioner to obtain the informed consent of the patient and allow this information to be used as evidence in a proceeding in which it is alleged that the physician or other qualified practitioner failed to obtain informed consent
- Clarifies informed consent requirements in human research conducted pursuant to approval by an institutional review board (IRB) or similar entity
- Clarifies when a physician or qualified staff person is required to obtain a separate or new informed consent from a patient when informed consent was already obtained

Thank you in advance for your consideration and support of Senate Bill 425.