

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1910 Session of 2011

INTRODUCED BY FRANKEL, DeLUCA, MICOZZIE, DERMODY, MARKOSEK, BARBIN, BOYD, B. BOYLE, BRADFORD, BRIGGS, V. BROWN, BURNS, BUXTON, CHRISTIANA, CONKLIN, D. COSTA, P. COSTA, DALEY, DEASY, DePASQUALE, DeWEESE, ELLIS, J. EVANS, EVANKOVICH, FABRIZIO, FREEMAN, GEIST, GERGELY, GIBBONS, GOODMAN, HALUSKA, HANNA, HARHAI, HARKINS, HARRIS, HORNAMAN, JOSEPHS, W. KELLER, KORTZ, KOTIK, KRIEGER, KULA, LONGIETTI, MAHER, MAHONEY, MANN, MARSHALL, MATZIE, MUNDY, MUSTIO, NEUMAN, M. O'BRIEN, PASHINSKI, PAYTON, PRESTON, RAVENSTAHL, READSHAW, REESE, SABATINA, SACCONI, SAINATO, SANTARSIERO, SHAPIRO, M. SMITH, SONNEY, STABACK, STURLA, VULAKOVICH, WAGNER, WHEATLEY, WHITE, YOUNGBLOOD AND DONATUCCI, OCTOBER 4, 2011

REFERRED TO COMMITTEE ON INSURANCE, OCTOBER 4, 2011

AN ACT

1 Amending Title 40 (Insurance) of the Pennsylvania Consolidated
2 Statutes, in general regulation, providing for contract
3 negotiation; and making an editorial change.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Part II of Title 40 of the Pennsylvania
7 Consolidated Statutes is amended to read:

8 REGULATION OF INSURERS AND RELATED

9 PERSONS GENERALLY

10 [(Reserved)]

11 CHAPTER 31

12 CONTRACT NEGOTIATION

13 Sec.

1 3101. Declaration of policy.
2 3102. Definitions.
3 3103. Good faith negotiations and dispute resolution.
4 3104. Arbitration.
5 3105. Arbitration criteria.
6 3106. Arbitration timing and rules.
7 3107. Prohibited conduct.
8 3108. Enforcement and remedies.
9 3109. Existing consent decrees and final orders.

10 § 3101. Declaration of policy.

11 The General Assembly finds and declares as follows:

12 (1) Property committed to charitable purposes should
13 have special protection under the law because it enjoys
14 tax-exempt status and relieves the public burden by advancing
15 a specific charitable cause.

16 (2) Under current law, charitable assets may not be
17 diverted from the purposes for which they were donated,
18 granted or devised without obtaining an order from the court
19 specifying the disposition of the assets.

20 (3) Under current law, the Attorney General is empowered
21 to intervene and protect the public interest in regard to
22 property committed to a charitable purpose.

23 (4) Over the course of the last ten years, the Attorney
24 General has intervened in the proposed transfer of property
25 committed to charitable purposes and has imposed a
26 requirement for good faith negotiations between certain
27 health plans and health care facilities, including specialty
28 hospitals and networks, followed by binding arbitration.

29 (5) Tens of thousands of citizens of this Commonwealth
30 have made direct charitable contributions to tax-exempt, not-

1 for-profit specialty hospitals and networks which enable the
2 provision by the hospitals and networks of critical health
3 care services to citizens of this Commonwealth.

4 (6) Every citizen of this Commonwealth makes an indirect
5 contribution to tax-exempt, not-for-profit specialty
6 hospitals and networks through government grants funded by
7 the payment of taxes.

8 (7) A not-for-profit specialty hospital or network which
9 has been granted tax-exempt status by the Commonwealth enjoys
10 a financial benefit not available to specialty hospitals or
11 networks which have not been granted that status, and this
12 financial benefit results in an economic advantage over its
13 competitors.

14 (8) In keeping with the intent of private donors of tax-
15 exempt, not-for-profit specialty hospitals and networks,
16 these hospitals and networks and their affiliated specialists
17 should be required to remain as accessible as possible to
18 every citizen of this Commonwealth, regardless of insurance
19 coverage.

20 (9) It is in the public interest that tax-exempt, not-
21 for-profit specialty hospitals and networks and their
22 affiliated specialists continue to be accessible, in the same
23 manner and to the same extent that they historically have
24 been accessible, to individuals residing in the geographic
25 areas served by the tax-exempt, not-for-profit hospitals and
26 networks and their affiliated specialists for medically
27 necessary specialty health services.

28 (10) A tax-exempt, not-for-profit specialty hospital or
29 network or its affiliated specialists that fail to negotiate
30 in good faith with a health plan or unreasonably refuse to

1 come to an agreement with a health plan regarding
2 reimbursement rates violate the will of its donors and, in
3 doing so, engage in the unauthorized diversion of charitable
4 assets from the purposes for which the specialty hospital or
5 network received its tax-exempt status.

6 § 3102. Definitions.

7 The following words and phrases when used in this chapter
8 shall have the meanings given to them in this section unless the
9 context clearly indicates otherwise:

10 "Affiliated specialist." A physician or other health care
11 professional or group of physicians or other health care
12 professionals that:

13 (1) has been granted privileges by a specialty hospital
14 or network to provide medical care to patients receiving
15 treatment at the specialty hospital or network; and

16 (2) has a practice owned directly or indirectly by:

17 (i) the specialty hospital or network referred to in
18 paragraph (1); or

19 (ii) a tax-exempt, not-for-profit corporation which
20 indirectly or directly owns or operates the specialty
21 hospital or network.

22 "Attorney General." The Office of Attorney General of the
23 Commonwealth.

24 "Commissioner." The Insurance Commissioner of the
25 Commonwealth.

26 "Health plan." An organized health-service purchasing
27 program. The term includes a health insurance or managed-care
28 plan which is offered by government, a for-profit or nonprofit
29 third-party payer, a health care provider or another entity.

30 "MSA." A metropolitan statistical area.

1 "Specialty hospital or network." Any of the following:

2 (1) A tax-exempt, not-for-profit hospital which:

3 (i) is located in a county of the second class; and

4 (ii) specializes in providing women's health care,
5 the treatment of mental illness or pediatric acute care.

6 (2) Oncological consultation, referral, diagnostic,
7 treatment, rehabilitation or related services, coordinated or
8 provided directly through a clinical oncology care and
9 research network which is owned or operated directly or
10 indirectly by a tax-exempt, not-for-profit corporation
11 headquartered in a county of the second class.

12 (3) Inpatient or outpatient behavioral and mental health
13 services coordinated or provided in this Commonwealth by a
14 hospital referred to in paragraph (1), regardless of whether
15 the services are provided at the hospital or at another
16 facility located in this Commonwealth.

17 (4) The parent corporation of a hospital referred to in
18 paragraph (1) or a network referred to in paragraph (2), with
19 respect to all matters relating to the hospital or network
20 covered by this chapter.

21 (5) A facility to which a hospital referred to in
22 paragraph (1) or a network referred to in paragraph (2)
23 transfers a substantial portion of its services.

24 "Tax exempt." Possessing a valid exemption from the tax
25 imposed by Article II of the act of March 4, 1971 (P.L.6, No.2),
26 known as the Tax Reform Code of 1971.

27 § 3103. Good faith negotiations and dispute resolution.

28 (a) Negotiation.--A specialty hospital or network, its
29 affiliated specialists and a health plan shall negotiate in good
30 faith concerning all of the following:

1 (1) Contracts for services at the specialty hospital or
2 network.

3 (2) Contracts with the affiliated specialists of the
4 specialty hospital or network.

5 (b) Dispute resolution.--A specialty hospital or network or
6 its affiliated specialists shall participate in the dispute
7 resolution process initiated by a health plan under this
8 section. The following shall apply:

9 (1) A health plan may initiate a dispute resolution
10 process by giving written notice to a specialty hospital or
11 network with which the health plan desires to contract or
12 continue to contract and its affiliated specialists. Notice
13 must be given as follows:

14 (i) Except as set forth in subparagraph (ii), at
15 least 90 days prior to the expiration of an existing
16 contract.

17 (ii) If the health plan does not have an existing
18 contract with the specialty hospital or network and its
19 affiliated specialists, at any time after the health plan
20 has notified the specialty hospital or network and its
21 affiliated specialists in writing of its interest in
22 negotiating a contract with the specialty hospital or
23 network and its affiliated specialists.

24 (2) The health plan sending the notice under paragraph
25 (1) and the specialty hospital or network and affiliated
26 specialists receiving the notice shall negotiate in good
27 faith toward a contract or renewal of an existing contract
28 for the specialty hospital's or network's services and the
29 services of its affiliated specialists. If a contract or a
30 renewal of an existing contract is not agreed upon within 90

days following notice under paragraph (1), section 3104
(relating to arbitration) applies.

§ 3104. Arbitration.

(a) Request.--At the conclusion of the dispute resolution
process described in section 3103 (relating to good faith
negotiations and dispute resolution), the following apply:

(1) The health plan may make a written request to the
commissioner for arbitration before an independent
arbitration panel. A copy of the request must be sent to the
specialty hospital or network and its affiliated specialists
with whom the health plan had been negotiating. The notice
must be accompanied by a written statement of the health plan
indicating the respective parties' last contract offers, a
description of issues that have been agreed to by all parties
and a description of issues still outstanding.

(2) Within ten days after receiving a copy of the notice
and statement, the specialty hospital or network and its
affiliated specialists shall notify the commissioner and the
health plan in writing of:

(i) their agreement with the health plan's
statement; or

(ii) their reasons for disagreement with the health
plan's statement.

(b) Determination.--

(1) After review of the statement and responses
submitted under subsection (a), the commissioner shall do one
of the following:

(i) Appoint an arbitration panel under subsection
(c).

(ii) Reject a request for arbitration because the

number and scope of disputed contract issues and terms
exceed the number and scope of the agreed upon contract
issues and terms.

(2) Upon a rejection under paragraph (1)(ii), all of the
following apply:

(i) The commissioner shall notify all parties of the
rejection and order them to engage in another 30 days of
negotiation.

(ii) Upon the expiration of the time period under
subparagraph (i) without resolution, all of the following
apply:

(A) The health plan shall notify the
commissioner in writing.

(B) The parties shall each submit the written
statement required under subsection (a), revised if
necessary, to reflect applicable changes resulting
from the additional period of negotiation.

(C) The commissioner shall appoint the
arbitration panel under subsection (c).

(c) Appointment of arbitration panel.--At the appropriate
time under subsection (b)(1)(i) or (2)(ii)(C), the commissioner
shall appoint five individuals to serve as an independent
arbitration panel:

(1) One member must be a representative of the specialty
hospital or network or one of its affiliated specialists.

(2) One member must be a representative of the health
plan.

(3) One member must be a representative of a local
business advocacy group from the geographic service territory
of the specialty hospital or network or affiliated

1 specialist. The member under this paragraph must not:

2 (i) be employed by, be on the board of or be
3 granted staff privileges by the specialty hospital or
4 network, any of its affiliated specialists or the health
5 plan; or

6 (ii) act as a paid consultant or advisor to the
7 specialty hospital or network, any of its affiliated
8 specialists or the health plan.

9 (4) One member must be a representative of a local
10 community advocacy group from the geographic service
11 territory of the specialty hospital or network and its
12 affiliated specialists. The member under this paragraph must
13 not:

14 (i) be employed by, be on the board of or be
15 granted staff privileges by the specialty hospital or
16 network, any of its affiliated specialists or the health
17 plan; or

18 (ii) act as a paid consultant or advisor to the
19 specialty hospital or network, any of its affiliated
20 specialists or the health plan.

21 (5) One member must be a representative of a health care
22 consumer group from the geographic service territory of the
23 specialty hospital or network and its affiliated specialists.
24 The member under this paragraph must not:

25 (i) be employed by, be on the board of or be
26 granted staff privileges by the specialty hospital or
27 network, any of its affiliated specialists or the health
28 plan; or

29 (ii) act as a paid consultant or advisor to the
30 specialty hospital or network, any of its affiliated

1 specialists or the health plan.

2 (d) Salary, experts and administrative support.--

3 (1) Members of the arbitration panel shall not receive a
4 salary or any other compensation for their services.

5 (2) An arbitration panel may retain experts or
6 consultants as necessary.

7 (i) Eligibility to serve as an expert or consultant
8 is as follows:

9 (A) The individual must not be an employee of,
10 be a member of a board of or be granted staff
11 privileges by the specialty hospital or network, any
12 of its affiliated specialists or the health plan.

13 (B) Within five years immediately preceding
14 engagement, the individual must not have been an
15 employee of, have been a member of a board of or have
16 been granted staff privileges by the specialty
17 hospital or network, any of its affiliated
18 specialists or the health plan.

19 (ii) The cost of experts and consultants shall be
20 divided equally between:

21 (A) the health plan; and

22 (B) the specialty hospital or network and its
23 affiliated specialists.

24 (3) The department shall provide staff and
25 administrative support to the arbitration panel as necessary
26 for the panel to carry out its responsibilities under this
27 chapter.

28 (4) The arbitration panel shall not be subject to 65
29 Pa.C.S. Ch. 7 (relating to open meetings) or to the act of
30 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know

1 Law. Notwithstanding this paragraph, the decision of the
2 arbitration panel shall be made available to the public upon
3 written request to the department and shall be posted on the
4 department's publicly accessible Internet website.

5 (e) Contract terms.--The arbitration panel shall determine
6 the terms under which the specialty hospital or network and its
7 affiliated specialists shall contract with the health plan.

8 § 3105. Arbitration criteria.

9 (a) Adoption of proposed contract.--

10 (1) If only one party has presented terms of a proposed
11 contract to the other parties, the arbitration panel shall
12 adopt the terms of the proposed contract.

13 (2) If more than one party submits terms of a proposed
14 contract to the other parties, the following apply:

15 (i) The arbitration panel shall undertake a review
16 of all proposed contracts and additional information as
17 the panel deems necessary in making a decision. The
18 arbitration panel may not consider the extent to which a
19 health plan is or is not purchasing other hospital or
20 physician services from the specialty hospital or network
21 or its affiliated specialists or from any other hospital
22 in common ownership or operation with the specialty
23 hospital or network or its affiliated specialists. The
24 arbitration panel shall inform the parties of the
25 additional information that should be submitted,
26 including:

27 (A) Terms of the current contract between the
28 health plan and the specialty hospital or network or
29 its affiliated specialists.

30 (B) Historic contract reimbursement rates for

1 the geographic area in this Commonwealth served by
2 the specialty hospital or network and its affiliated
3 specialists. This clause includes weighted average
4 rates of the hospitals in the area for all payers,
5 separately for each product line for which the health
6 plan is seeking a contract.

7 (C) Rate of inflation, as measured by the
8 Medical Care Portion of the Consumer Price Index,
9 since the current contract between the health plan
10 and the specialty hospital or network or its
11 affiliated specialists was entered into and the
12 extent to which a price increase incorporated into
13 the contract was less than the rate of inflation.

14 (D) Inflation factors in the geographic area in
15 this Commonwealth served by the specialty hospital or
16 network and its affiliated specialists for health
17 care and medical services.

18 (E) Average reimbursement rates for other
19 similar specialty hospitals or networks and their
20 affiliated specialists, as adjusted for the
21 difference in the cost of living between:

22 (I) the closest MSA; and

23 (II) the home MSA of each of the similar
24 specialty hospitals or networks or affiliated
25 specialists.

26 (F) Costs incurred by the specialty hospital or
27 network and its affiliated specialists in providing
28 services to its patients.

29 (G) Actuarial impact of a proposed contract or
30 reimbursement rates paid by the health plan and a

1 comparison of the health plan reimbursement rates in
2 this Commonwealth and health plan reimbursement rates
3 in other parts of the country.

4 (H) Whether a reimbursement rate proposed by the
5 specialty hospital or network or its affiliated
6 specialists would subsidize a health plan owned or
7 operated by any tax-exempt, not-for-profit
8 corporation which owns or operates the specialty
9 hospital or network and the practice of the
10 affiliated specialists.

11 (I) Reimbursement rates paid by the health plan
12 at similar specialty hospitals or networks or to
13 similar affiliated specialists.

14 (J) Whether a proposed contract puts the
15 specialty hospital or network or its affiliated
16 specialists at risk of providing additional care
17 without additional compensation.

18 (K) Expected patient volume which will likely
19 result from the contract.

20 (ii) The arbitration panel may:

21 (A) adopt one of the proposed contracts; or

22 (B) impose other terms of a proposed contract.

23 § 3106. Arbitration timing and rules.

24 (a) Commencement and length of process.--

25 (1) The arbitration process provided for under this
26 chapter shall commence within 20 days after appointment of
27 the members of the panel by the commissioner and may not
28 exceed three days of presentation and testimony by all
29 parties.

30 (2) The arbitration panel shall render a decision within

1 seven business days after the conclusion of the presentations
2 and testimony.

3 (3) The parties, by agreement, or the arbitration panel,
4 due to the complexity of the issues involved, may extend any
5 of the time periods under this subsection, except that the
6 rendering of a decision by the arbitration panel may not
7 occur later than 90 days following the appointment of the
8 members of the panel by the commissioner.

9 (b) Establishment of rules.--Once the arbitration process
10 has been invoked, the arbitration panel shall establish rules
11 for confidentiality, exchange and verification of information
12 and other procedures to ensure the fairness of the process for
13 all parties.

14 (c) Effect of decision.--The parties shall be bound by the
15 decision of the arbitration panel.

16 (d) Costs.--Each party shall bear the cost of its respective
17 presentations and testimony to the arbitration panel.

18 (e) Reimbursement rates during arbitration process.--The
19 following shall apply during the period commencing with the
20 appointment of the members to the arbitration panel by the
21 commissioner and ending with the rendering of the panel's
22 decision:

23 (1) An existing contract that is scheduled to expire by
24 its terms shall remain in full force and effect. If terms
25 that are different from those in the expiring contract are
26 imposed by the arbitration panel or are agreed to by the
27 parties, the new contract and terms shall be retroactive to
28 the day after the expiration date in the existing contract
29 and any change in reimbursement rates shall be adjusted
30 retroactively.

1 (2) If the health plan does not have a contract with the
2 specialty hospital or network and its affiliated specialists,
3 the health plan shall pay, and the specialty hospital or
4 network or affiliated specialists shall accept as full
5 payment, for all services provided by the specialty hospital
6 or network and its affiliated specialists for which payment
7 has not already been made and accepted, an amount equal to
8 the average reimbursement rates for other similar specialty
9 hospitals or networks and their affiliated specialists as
10 adjusted for the difference in cost of living for the nearest
11 MSA as compared to the home MSA of each of the similar
12 specialty hospitals or networks and their affiliated
13 specialists. Upon entering into the contract imposed by the
14 arbitration panel, the amounts paid by the health plan shall
15 be adjusted retroactively to reflect the actual rates
16 contained in the contract.

17 (3) The following shall apply:

18 (i) If the arbitration panel imposes a reimbursement
19 rate that is different from the rate paid by the health
20 plan under this subsection, the resulting contract shall
21 provide for an appropriate credit or payment retroactive
22 to the date that the commissioner appoints the members of
23 the arbitration panel.

24 (ii) If the reimbursement rate paid under this
25 subsection is less than the reimbursement rate required
26 under the resulting contract, the health plan shall pay
27 interest to the specialty hospital or network and its
28 affiliated specialists on the difference.

29 (iii) If the reimbursement rate paid under this
30 subsection is greater than the reimbursement rate

1 required under the resulting contract, the specialty
2 hospital or network and its affiliated specialists shall
3 pay interest to the health plan on the difference.

4 (iv) The interest rate payable under this paragraph
5 shall be equal to the average of the United States prime
6 lending rate offered by the three largest banks ranked by
7 total deposits in the nearest MSA as of the date of the
8 arbitration panel's decision.

9 § 3107. Prohibited conduct.

10 (a) Staff privileges.--A specialty hospital or network may
11 not condition the granting of staff privileges at the specialty
12 hospital or network on any of the following:

13 (1) Employment at a specialty hospital or network or
14 participation in a specific health plan owned or operated by
15 a tax-exempt, not-for-profit corporation that also owns or
16 operates the specialty hospital or network.

17 (2) Prohibiting a physician from practicing at other
18 facilities.

19 (3) The amount of business or patients a physician
20 brings or may bring to the specialty hospital or network,
21 unless the condition is directly related to quality-of-care
22 requirements.

23 (b) Nonexclusivity.--

24 (1) A specialty hospital or network or any of its
25 affiliated specialists may not enter into a contract with a
26 health plan containing terms which prohibit either of the
27 following:

28 (i) the specialty hospital or network or any of its
29 affiliated specialists from contracting with any other
30 health plan for any services the specialty hospital or

1 network and its affiliated specialists provide; or
2 (ii) the health plan from contracting with any other
3 health care provider for the types of services the
4 specialty hospital or network and its affiliated
5 specialists provide.

6 (2) A specialty hospital or network may not prohibit
7 physicians who have privileges at the specialty hospital or
8 network and who are not employees of the specialty hospital
9 or network from providing services to any other hospital,
10 hospital network, health plan or integrated delivery system.

11 (c) Nontying provisions.--

12 (1) A health plan may not be required to contract with
13 another health care facility under common ownership with a
14 specialty hospital or network or its affiliated specialists
15 as a condition of contracting with the specialty hospital or
16 network or for the services of its affiliated specialists.

17 (2) A specialty hospital or network or any of its
18 affiliated specialists may not require a hospital, health
19 system or other provider to have a contract with a health
20 plan owned or operated by the specialty hospital or network,
21 any of its affiliated specialists or any of its affiliates as
22 a condition of accepting patients referred by the hospital,
23 health system or other provider.

24 (3) A specialty hospital or network or any of its
25 affiliated specialists may not require that a hospital,
26 health system or other provider agree not to contract with
27 certain health plans as a condition to accepting patients
28 referred by the hospital, health system or other provider.

29 (d) Discrimination.--A specialty hospital or network or any
30 of its affiliated specialists may not discriminate against a

patient based upon the location of the patient's residence, the
patient's health plan or the patient's choice of physician. A
specialty hospital or network or any of its affiliated
specialists may not discriminate, in the provision of medically
necessary services or the release of medical records or
information about patients who receive treatment or services
from the specialty hospital or network or its affiliated
specialists, against health plans, physicians or other medical
providers based on ownership or employment of health plans,
physicians or other medical providers.

(e) Use of most favored nation provisions.--A specialty
hospital or network or any of its affiliated specialists may not
enter into a contract with a health plan on terms that include a
most favored nations clause.

(f) Participation in dispute resolution or arbitration.--A
specialty hospital or network or any of its affiliated
specialists may not refuse or fail to participate and cooperate
in the dispute resolution process under section 3103 (relating
to good faith negotiations and dispute resolution) or the
arbitration process under section 3104 (relating to arbitration)
once it has received a notice from a health plan under those
sections.

(g) Compliance with arbitration decision.--A specialty
hospital or network or any of its affiliated specialists or a
health plan may not refuse or fail to enter into or renew a
contract under the terms imposed by the arbitration panel under
section 3106 (relating to arbitration timing and rules) or to
comply with any other order or decision of the arbitration
panel.

§ 3108. Enforcement and remedies.

1 (a) Enforcement.--

2 (1) The Attorney General shall have the power and duty
3 to enforce the provisions of this chapter, including the
4 authority to issue civil investigative demands under
5 subsection (b), institute proceedings under subsection (c)
6 and to take any other actions as may be necessary to
7 ascertain and investigate alleged violations or anticipated
8 violations of this chapter.

9 (2) The Attorney General shall develop a complaint
10 procedure for any person wishing to report a suspected
11 violation or anticipated violation of this chapter and shall
12 post the procedure on its publicly accessible Internet
13 website.

14 (3) Nothing contained in this section shall be construed
15 to limit the regulatory or investigative authority of the
16 Attorney General or any other department, agency or
17 instrumentality of the Commonwealth whose functions might
18 relate to persons or matters falling within the scope of this
19 chapter.

20 (b) Civil investigative demand.--

21 (1) If the Attorney General has reason to believe that
22 any person may be in possession, custody or control of
23 documentary material relevant to an investigation under this
24 chapter, the Attorney General may issue in writing and serve
25 upon the person a civil investigative demand requiring the
26 production of the material for examination.

27 (2) Each demand shall:

28 (i) state the nature of the conduct constituting the
29 alleged violation which is under investigation, the
30 applicable provision of law and the connection between

1 the documentary material demanded and the conduct under
2 investigation;

3 (ii) describe the class of documentary material to
4 be produced with sufficient definiteness and certainty to
5 permit the material to be fairly identified;

6 (iii) state the demand is returnable immediately
7 upon receipt or prescribe a return date which will
8 provide a reasonable time period within which the
9 material demanded may be assembled and made available for
10 inspection and copying or reproduction;

11 (iv) identify an investigator to whom the material
12 shall be made available; and

13 (v) contain the following statement printed
14 conspicuously at the top of the demand:

15 You have the right to seek the assistance of an
16 attorney and he may represent you in all phases of
17 the investigation of which this civil investigative
18 demand is a part.

19 (3) A demand may not do any of the following:

20 (i) Contain a requirement which would be held to be
21 unreasonable if contained in a subpoena duces tecum
22 issued by any court in connection with a grand jury
23 investigation of the alleged violation.

24 (ii) Require the production of documentary evidence
25 which would be privileged from disclosure if demanded by
26 a subpoena duces tecum issued by a court in connection
27 with a grand jury investigation of the alleged violation.

28 (4) Service of a demand or a petition filed under this
29 section shall be made in the manner prescribed by the
30 Pennsylvania Rules of Civil Procedure for service of writs

1 and complaints.

2 (5) A verified return by the individual serving a demand
3 or petition setting forth the manner of the service shall be
4 prima facie proof of the service. In the case of service by
5 registered or certified mail, the return shall be accompanied
6 by the return post office receipt of delivery of the demand.

7 (6) A person upon whom a demand issued under this
8 subsection has been duly served shall make the material
9 available for inspection and copying or reproduction to the
10 identified investigator at the principal place of business of
11 the person, or at any other place as the investigator and the
12 person may agree or as a court may direct, on the return date
13 specified in the demand. The person may, with the agreement
14 of the investigator, substitute copies of all or any part of
15 the material for the originals.

16 (7) The following shall apply:

17 (i) The investigator to whom documentary material is
18 delivered shall take physical possession of it and shall
19 be responsible for the use for which it is made and for
20 its return under paragraph (8) or (9).

21 (ii) The investigator may cause the preparation of
22 copies of the material as required for official use.

23 (iii) While in the possession of the investigator,
24 no material produced shall be available for examination
25 without the consent of the person who produced the
26 material by a person other than the investigator or a
27 representative of the Attorney General.

28 (iv) Documentary material in the possession of the
29 investigator shall be available for examination by the
30 person who produced the material or a duly authorized

representative of the person, subject to reasonable terms
and conditions as prescribed by the Attorney General.

(8) Upon completion of the investigation for which
documentary material was produced under this subsection and
any case or proceeding arising from the investigation, the
investigator shall return to the person who produced the
material all of the material other than copies made under
paragraph (6) which have not passed into the control of any
court or grand jury through introduction into the record of
the case or proceeding.

(9) If documentary material has been produced by a
person under this subsection for use in an investigation and
no case or proceeding arising from the investigation has been
instituted within a reasonable time after completion of the
examination and analysis of all evidence assembled in the
course of the investigation, the person shall be entitled,
upon written demand made upon the Attorney General, to the
return of all documentary material, other than copies made
under paragraph (6), produced by the person.

(10) The following shall apply:

(i) Within 20 days after the service of the demand
upon a person, or at any time before the return date
specified in the demand, whichever period is shorter, the
person may file in Commonwealth Court and serve upon the
Attorney General a petition for an order of the court
modifying or setting aside the demand.

(ii) The time allowed for compliance with the demand
in whole or in part as deemed proper and ordered by the
court shall not run during the pendency of the petition
in the court. The petition shall specify each ground upon

1 which the petitioner relies in seeking the relief and may
2 be based upon a failure of the demand to comply with this
3 subsection or upon a constitutional or other legal right
4 or privilege of the person.

5 (11) Subject to paragraph (10), if a person fails to
6 comply with a civil investigative demand duly served upon the
7 person under this subsection or if satisfactory copying or
8 reproduction of the material cannot be done and the person
9 refuses to surrender the material, the Attorney General may
10 file in Commonwealth Court and serve upon the person a
11 petition for an order of the court for the enforcement of the
12 demand.

13 (12) If the Attorney General is in custody or control of
14 documentary material delivered by a party in compliance with
15 a demand, the person may file in Commonwealth Court and serve
16 upon the Attorney General a petition for an order of the
17 court requiring the performance of a duty imposed under this
18 subsection.

19 (13) If a petition is filed under paragraph (10), (11)
20 or (12), the court shall have jurisdiction to hear and
21 determine the matter presented and, after a hearing at which
22 all parties are represented, to enter an order to carry out
23 this subsection.

24 (14) If an individual refuses, on the basis of the
25 person's Fifth Amendment privilege against self-
26 incrimination, to comply with a civil investigative demand
27 issued under this subsection, the Attorney General may invoke
28 42 Pa.C.S. § 5947 (relating to immunity of witnesses).

29 (c) Civil remedies.--

30 (1) Commonwealth Court shall have jurisdiction to

1 prevent, restrain and remedy violations of this chapter by
2 issuing appropriate orders, including:

3 (i) Ordering a person who has been found to be in
4 violation of section 3107(a), (b), (c), (d) or (e)
5 (relating to prohibited conduct) to immediately cease and
6 desist from engaging in any such conduct.

7 (ii) Ordering a person who has been found to be in
8 violation of section 3107(f) to immediately commence full
9 participation in the dispute resolution or arbitration
10 process and to continue to participate until completion
11 of the process.

12 (iii) Ordering the immediate implementation of the
13 contract terms contained in the arbitration panel's
14 decision or order, regardless of whether the contract is
15 executed by the person who has been found to be in
16 violation of section 3107(g).

17 (iv) Enjoining the conduct of a person found to have
18 demonstrated intent to violate section 3107.

19 (v) Any other order as the court deems necessary or
20 appropriate under the circumstances.

21 (2) In addition to any other remedy provided for under
22 this section or ordered by the court, the court shall order
23 the following:

24 (i) The revocation of the tax-exempt status of a
25 specialty hospital or network and its tax-exempt, not-
26 for-profit corporate parent if the court finds that the
27 specialty hospital or network or any of its affiliated
28 specialists have violated section 3107. If the court
29 revokes the tax-exempt status of an entity under this
30 subparagraph, neither the specialty hospital or network

1 nor its tax-exempt, not-for-profit corporate parent
2 shall, after the revocation, be deemed to be an
3 institution of purely public charity under the act of
4 November 26, 1997 (P.L.508, No.55), known as the
5 Institutions of Purely Public Charity Act.

6 (ii) Costs and expenses, including a reasonable sum
7 for attorney fees, to the Attorney General for any
8 proceeding instituted by the Attorney General under this
9 section in which the Attorney General prevails, payable
10 by the person found to be in violation or anticipated
11 violation of section 3107 (relating to prohibited
12 conduct).

13 § 3109. Existing consent decrees and final orders.

14 Nothing in this chapter shall be interpreted to invalidate
15 any part of a consent decree or final order that establishes an
16 arbitration process between a specialty hospital or network and
17 its affiliated specialists or any other health care facility and
18 a health plan agreed to or issued prior to June 30, 2011, as
19 long as the terms of the consent decree or final order are in
20 full force and effect. If a conflict exists between a provision
21 of this chapter and a provision of the consent decree or final
22 order, the provision of the consent decree or final order shall
23 prevail as long as the terms of the consent decree or final
24 order are in full force and effect.

25 Section 2. The addition of 40 Pa.C.S. Ch. 31 shall apply to
26 contracts negotiated, expiring or proposed to be terminated on
27 and after the effective date of this section.

28 Section 3. This act shall take effect immediately.