

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 2504 Session of  
2004

---

INTRODUCED BY GINGRICH, HESS, WATSON, GEORGE, BARRAR, GOODMAN,  
CORRIGAN, KILLION, WHEATLEY, PAYNE, SCAVELLO, GODSHALL,  
LEACH, VANCE, CLYMER, THOMAS, WATERS, RUBLEY, HENNESSEY,  
SOLOBAY, PHILLIPS, TANGRETTI, CRAHALLA, WILT, HORSEY,  
DENLINGER, PISTELLA, BASTIAN, HARHART, SEMMEL, YUDICHAK,  
E. Z. TAYLOR, BROWNE, J. TAYLOR, FRANKEL, WEBER, GOOD, JAMES,  
MILLARD AND YOUNGBLOOD, APRIL 2, 2004

---

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,  
APRIL 2, 2004

---

AN ACT

1 Establishing the Long-Term Care Quality Improvement Council; and  
2 providing for a system for data collection, benchmarking and  
3 dissemination of nursing facility quality performance  
4 reports, for annual reports to the General Assembly and for  
5 publication of reports for public use.

6 TABLE OF CONTENTS

7 Chapter 1. General Provisions

8 Section 101. Short title.

9 Section 102. Legislative findings.

10 Section 103. Definitions.

11 Chapter 3. Long-Term Care quality Improvement Council

12 Section 301. Establishment of council.

13 Section 302. Powers and duties.

14 Section 303. Agency responsibilities.

15 Chapter 5. Miscellaneous Provisions

16 Section 501. Administration.

1 Section 502. Repeals.

2 Section 503. Effective date.

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

5 CHAPTER 1

6 GENERAL PROVISIONS

7 Section 101. Short title.

8 This act shall be known and may be cited as the Long-Term  
9 Care Quality Improvement Act.

10 Section 102. Legislative findings.

11 The General Assembly finds and declares as follows:

12 (1) This Commonwealth has the third oldest population  
13 demographically of any state, with more than 1.9 million  
14 residents who are at least 65 years of age and will  
15 increasingly demand more intensive long-term care services.  
16 Currently, approximately 77,500 older Pennsylvanians reside  
17 in nursing facilities; approximately 53,000 reside in  
18 personal care homes or assisted living residences; at least  
19 20,000 Pennsylvanians reside in independent housing  
20 environments; and thousands more receive long-term care and  
21 services in their homes and in community settings.

22 (2) For the foreseeable future, the needs of  
23 Pennsylvanians for long-term care will continue to increase  
24 substantially and the peak post-World War II baby boom  
25 population will reach retirement age beginning in 2010.

26 (3) As this Commonwealth's population continues to age,  
27 the number of impairments of daily living activities among  
28 citizens requiring long-term care will also continue to  
29 increase, thereby posing greater challenges to all providers  
30 of long-term care.

1           (4) The Commonwealth should respond to the demographic  
2 and health care challenges it faces by becoming the nation's  
3 leader in providing and assuring high quality long-term care  
4 services.

5           (5) While the enforcement of licensing requirements  
6 through inspections and a system of reasonable and  
7 proportionate sanctions is necessary to establish and  
8 maintain minimum standards for long-term care in order to  
9 promote excellence in long-term care, the focus of the  
10 Commonwealth's efforts should be expanded to prioritize the  
11 development of programs to continuously promote systemic  
12 improvement in the quality of long-term care.

13           (6) The establishment of a comprehensive consumer  
14 information system that makes readily available comparative  
15 information regarding long-term care providers, services  
16 provided and a quantifiable and reliable performance  
17 measurement system that links standards and modalities for  
18 the provision of care to actual outcomes will allow consumers  
19 and their family members to make more informed choices and  
20 promote continuous and systemic improvements in the quality  
21 of long-term care and services.

22           (7) An effective performance measurement system should  
23 be developed in cooperation with consumers, family members,  
24 providers, regulators and payers to provide specific  
25 benchmarks to compare various care settings and include not  
26 only clinical outcomes but also managerial and operational  
27 practices.

28           (8) The Department of Health's clinical best-management  
29 practices research project has successfully facilitated a  
30 comparison between good and average nursing facilities and

1 promoted improvements and innovations with respect to the  
2 quality of services provided by nursing facilities.

3 (9) The project should be substantially expanded to  
4 include all settings and modalities in which long-term care  
5 is provided and continuously improved. Additional resources  
6 should be devoted to research needed to validate the  
7 clinical, operational and managerial practices that are truly  
8 superior and meaningfully contribute to a higher quality of  
9 care and a better quality of life for older Pennsylvanians.

10 Section 103. Definitions.

11 The following words and phrases when used in this act shall  
12 have the meanings given to them in this section unless the  
13 context clearly indicates otherwise:

14 "Benchmarks." Combinations of measures relating to long-term  
15 care providers, including evaluations of services provided,  
16 compliance history, best-management practices and outcome-based  
17 performance measures, developed as voluntary consensus standards  
18 and verified based upon research and evaluation, that are  
19 associated with providing various levels of quality of care  
20 suitable for the management of particular conditions, diseases  
21 or disabilities for which long-term care is necessary and  
22 appropriate.

23 "Best practices." Clinical, operational and managerial  
24 related practices that promote the provision of high-quality  
25 long-term care.

26 "Commonwealth agency." An agency of the Commonwealth  
27 responsible for the licensing, registration, certification,  
28 inspection and investigation of long-term care providers,  
29 including, but not limited to, the Department of Aging, the  
30 Department of Health, the Insurance Department and the

1 Department of Public Welfare.

2 "Council." The Long-Term Care Quality Improvement Council  
3 established in section 301.

4 "Health Care Cost Containment Council." The agency  
5 established pursuant to the act of July 8, 1986 (P.L.408,  
6 No.89), known as the Health Care Cost Containment Act.

7 "Long-term care." Assistance, services or devices provided  
8 over an extended period of time and designed to meet medical,  
9 personal and social needs associated with aging, chronic disease  
10 or disability, acute illness or injury or behavioral health  
11 problems that enable a person to live as independently as  
12 possible, which services are provided by a nursing facility,  
13 assisted living facility, domiciliary care home, personal care  
14 home, continuing care retirement community, home health agency,  
15 adult day-care provider or other home-based and community-based  
16 provider.

17 "Long-term care provider." An entity licensed, certified or  
18 approved by a Commonwealth agency to provide long-term care.

19 "Patient Safety Authority." The authority established  
20 pursuant to section 303 of the act of March 20, 2002 (P.L.154,  
21 No.13), known as the Medical Care Availability and Reduction of  
22 Error (Mcare) Act.

23 "Performance measures." A series of standards, including  
24 licensure standards, outcomes measures and satisfaction  
25 measures, designed to evaluate the performance of an individual  
26 long-term care provider.

27 "Voluntary consensus standards." Nonbinding standards for  
28 performance developed through a process comparable to procedures  
29 used to develop standards, pursuant to section 2(b)(10) of the  
30 National Institute of Standards and Technology Act (31 Stat.

1 1449, 15 U.S.C. § 272(b)(10)), involving consultation with  
2 consumers, family members, regulators and long-term care  
3 providers, validated on clinical research and subject to regular  
4 and periodic review and modification as necessary to  
5 continuously seek improvements in the quality of long-term care.

### 6 CHAPTER 3

#### 7 LONG-TERM CARE QUALITY IMPROVEMENT COUNCIL

8 Section 301. Establishment of council.

9 (a) General rule.--

10 (1) The Long-Term Care Quality Improvement Council is  
11 established as an independent council. The council shall be  
12 affiliated with and provided administrative support and legal  
13 services by the Patient Safety Authority and may take action  
14 jointly in cooperation with the Patient Safety Authority.

15 (2) The termination of the Health Care Cost Containment  
16 Council shall not result in the termination of the Long-Term  
17 Care Quality Improvement Council.

18 (b) Composition.--The council shall consist of the following  
19 members:

20 (1) The Secretary of Aging.

21 (2) The Secretary of Health.

22 (3) The Secretary of Public Welfare.

23 (4) The Insurance Commissioner.

24 (5) The Physician General.

25 (6) The Executive Director of the Health Care Cost  
26 Containment Council, except that in the event the Health Care  
27 Cost Containment Council terminates, the Governor shall  
28 appoint a representative of providers of long-term care  
29 insurance.

30 (7) Ten residents of this Commonwealth who represent

1 long-term care providers, three of whom shall be appointed by  
2 the President pro tempore of the Senate, three of whom shall  
3 be appointed by the Speaker of the House of Representatives,  
4 two of whom shall be appointed by the Minority Leader of the  
5 Senate and two of whom shall be appointed by the Minority  
6 Leader of the House of Representatives, provided that not  
7 more than one member shall be appointed as a representative  
8 respectively of proprietary nursing facilities, nonprofit  
9 nursing facilities, county-owned nursing facilities,  
10 hospital-based nursing facilities, personal care homes,  
11 assisted living facilities, continuing care retirement  
12 communities and home health agencies. Initial appointments  
13 under this paragraph shall occur sequentially by the  
14 President pro tempore of the Senate, the Speaker of the House  
15 of Representatives, the Minority Leader of the Senate and the  
16 Minority Leader of the House of Representatives.

17 (8) Three members who are affiliated with Commonwealth-  
18 based research organizations with a purpose of determining  
19 the components or factors that serve appropriately as the  
20 indicators of quality care in long-term care, one of whom  
21 shall be appointed by the Governor, one of whom shall be  
22 appointed by the President pro tempore of the Senate and one  
23 of whom shall be appointed by the Speaker of the House of  
24 Representatives.

25 (9) Two physicians who practice in long-term care  
26 settings, one in a facility-based setting and the other in a  
27 community setting, both of whom shall be appointed by the  
28 Governor from a list of at least four qualified individuals  
29 recommended by the Pennsylvania Medical Directors  
30 Association.

1           (10) Two licensed nurses with a minimum of five years'  
2       experience practicing in a long-term care provider setting  
3       and currently employed by a long-term care provider, one in a  
4       facility-based setting and the other in a community setting,  
5       who shall be appointed by the Governor.

6           (11) Two residents of this Commonwealth who receive or  
7       formerly received long-term care, one in a facility-based  
8       setting and the other in a community setting, or a family  
9       member of a past or current recipient of long-term care in  
10      such settings, who are not health care workers nor  
11      representatives of a consumer advocacy group, whether paid or  
12      unpaid, both of whom shall be appointed by the Governor.

13      (c) Chairperson and vice chairperson.--The members of the  
14      council shall annually elect, by a majority vote of the members,  
15      a chairperson and a vice chairperson from among the members who  
16      do not serve in an ex officio capacity.

17      (d) Bylaws.--The council shall adopt bylaws, not  
18      inconsistent with this act, and may appoint such committees or  
19      elect such officers subordinate to those provided for in  
20      subsection (c) as it deems advisable.

21      (e) Professional advisory group.--The council shall appoint  
22      a professional advisory group that shall, on an ad hoc basis,  
23      respond to issues presented to it by the council or committees  
24      of the council and shall make recommendations to the council.

25      (f) Compensation and expenses.--The members of the council  
26      and the professional advisory group shall not receive a salary  
27      or per diem allowance for serving in that capacity but shall be  
28      reimbursed for actual and necessary expenses incurred in the  
29      performance of their duties, including reimbursement of travel  
30      and living expenses while engaged in council business.



1 (g) Terms.--The terms of the Secretary of Aging, the  
2 Secretary of Health, the Secretary of Public Welfare, the  
3 Insurance Commissioner, the Physician General and the Executive  
4 Director of the Health Care Cost Containment Council shall be  
5 concurrent with their holding of public office, and the other  
6 members shall each serve for a term of three years and continue  
7 to serve until their successor is appointed.

8 (h) Vacancies.--Vacancies on the council shall be filled in  
9 the same manner in which they were originally designated under  
10 subsection (b) within 60 days of the vacancy, except that  
11 appointments to fill vacancies pursuant to subsection (b)(7)  
12 shall be made from among the same class or category of long-term  
13 care providers as the immediate successor of the appointee,  
14 except as otherwise agreed upon by the appointing authorities in  
15 the event that two or more vacancies are filled at the same  
16 time.

17 (i) Quorum.--A majority of the members of the council shall  
18 constitute a quorum. Notwithstanding any other provision of law,  
19 action may be taken by the council at a meeting upon a vote of  
20 the majority of the members present in person or through use of  
21 amplified telephonic equipment if authorized by the bylaws of  
22 the council.

23 (j) Meetings.--The council shall meet at least quarterly and  
24 at the call of the chairperson or as may be provided in the  
25 bylaws of the council.

26 Section 302. Powers and duties.

27 (a) General powers.--The council shall exercise all powers  
28 necessary and appropriate to carry out its duties, including the  
29 following:

30 (1) To employ an executive director and other staff as

1 necessary to implement this act and to fix their compensation  
2 and duties. Employees of the council shall be deemed  
3 employees of the Commonwealth for all purposes.

4 (2) To apply for, solicit, receive, establish priorities  
5 for, allocate, disburse, contract for and administer funds,  
6 including appropriations, grants, gifts and bequests, that  
7 are made available to the council from any source consistent  
8 with the purposes of this act.

9 (3) To make and execute contracts and other instruments  
10 and engage professional consultants as necessary to implement  
11 this act pursuant to the procedures set forth in section 16  
12 of the act of July 8, 1986 (P.L.408, No.89), known as the  
13 Health Care Cost Containment Act.

14 (4) To conduct examinations, investigations and audits  
15 and to hear testimony and take proof, under oath or  
16 affirmation, at public or private hearings on any matter  
17 necessary to its duties.

18 (b) Rules and regulations.--The council may, in the manner  
19 provided by law, promulgate rules and regulations necessary to  
20 carry out its duties under this act, including rules and  
21 regulations relating to:

22 (1) The establishment of a methodology to collect,  
23 analyze and disseminate data reflecting provider quality and  
24 service effectiveness and to continuously study quality of  
25 care.

26 (2) The submission of health care information by long-  
27 term care providers to the council as necessary to evaluate  
28 provider quality and service effectiveness and to  
29 continuously study the quality of care. Any documents,  
30 materials, records, information or other raw data submitted

1 by a long-term care provider shall be deemed confidential by  
2 the council and shall not be discoverable or admissible as  
3 evidence in any civil or administrative action or proceeding  
4 in the same manner as provided by section 311 of the act of  
5 March 20, 2002 (P.L.154, No.13), known as the Medical Care  
6 Availability and Reduction of Error (Mcare) Act, and shall  
7 only be made available to any person or agency other than the  
8 council, except in reports regarding the overall quality of  
9 long-term care, with the expressed written consent of such  
10 providers.

11 (3) Audits of information submitted by data sources as  
12 needed to corroborate the accuracy of the data, provided that  
13 audits shall be coordinated, to the extent practical, with  
14 other audits performed by or on behalf of the Commonwealth.

15 (c) Development of voluntary consensus standards.--The  
16 council shall contract with an independent, qualified,  
17 experienced and nationally recognized for-profit or not-for-  
18 profit entity qualified to develop, implement and continuously  
19 update and revise voluntary consensus standards for long-term  
20 care providers to do all of the following:

21 (1) Provide comprehensive comparative information  
22 regarding the characteristics of long-term care providers and  
23 services provided by them, including, but not limited to,  
24 information relating to location, capacity, staffing,  
25 financial performance, methods of payment accepted and the  
26 availability of financial assistance.

27 (2) Provide comprehensive comparative information  
28 regarding the quality of care of services provided by long-  
29 term care providers.

30 (3) Identify, evaluate and promote the adoption of best

1 practices for long-term care providers and provide  
2 comprehensive comparative information regarding the  
3 utilization of best practices by long-term care providers.

4 (4) Identify and validate performance measures for the  
5 evaluation of the quality of long-term care and provide  
6 comprehensive comparative information regarding the quality  
7 of long-term care offered by long-term care providers based  
8 upon such performance measures.

9 (5) Provide benchmarks for long-term care providers,  
10 which benchmarks combine information relating to the  
11 characteristics, services, compliance history, adoption of  
12 best practices and quality of care as determined by  
13 performance measures, for use in a rating system that will  
14 assist consumers and family members in choosing the most  
15 appropriate options for obtaining long-term care.

16 (6) Provide a comprehensive comparative information  
17 system that is readily available to consumers and their  
18 family members without cost both through publications and  
19 Internet access regarding long-term care providers and  
20 assists in the selection and utilization of long-term care  
21 and services and the determination of plans for obtaining  
22 long-term care best suited to meet the particular needs of  
23 individual consumers.

24 (7) Provide recommendations to the council for long-term  
25 care policies, practices and procedures that may be  
26 instituted for the purpose of enhancing and improving the  
27 quality of long-term care provided.

28 (8) Establish annual quality improvement goals for long-  
29 term care facilities in this Commonwealth.

30 (d) Annual report to General Assembly.--The council shall

1 issue a report no later than December 31, 2004, and annually  
2 thereafter, to the General Assembly and the public regarding its  
3 activities during the preceding year. The report shall be made  
4 available without cost both through publication and Internet  
5 access and shall include:

- 6 (1) A schedule of the year's meetings.
- 7 (2) A list of contracts entered into by the council and  
8 amounts awarded to each contractor.
- 9 (3) Financial information regarding funding received and  
10 expenditures undertaken by the council and appropriations  
11 requested by the council.
- 12 (4) A summary of data collected regarding the  
13 characteristics and services provided by long-term care  
14 providers, adoption of best practices and achievement of  
15 quality based on performance measures.
- 16 (5) The status of development, implementation, use and  
17 improvement in the comprehensive comparative consumer  
18 information system as provided by subsection (c)(6).
- 19 (6) Recommendations for long-term care policies,  
20 practices and procedures that may be voluntarily adopted by  
21 long-term care providers to enhance and improve the quality  
22 of long-term care.
- 23 (7) Recommendations for statutory or regulatory changes  
24 to improve long-term care provider quality performance.

25 Section 303. Commonwealth agency responsibilities.

26 (a) General rule.--Each Commonwealth agency responsible for  
27 the regulation of long-term care providers or the development of  
28 policies regarding long-term care shall:

- 29 (1) Receive and review reports of trends identified in  
30 the analysis of performance measures under section 302.



1 provided by the Health Care Cost Containment Act.

2 (c) Antitrust.--A person or entity that submits or receives  
3 data or information under this act or receives data or  
4 information from the council or its professional consultants in  
5 accordance with this act are declared to be acting pursuant to  
6 Commonwealth requirements embodied in this act and shall be  
7 exempt from antitrust claims or actions grounded upon the  
8 submission or receipt of such data or information.

9 Section 502. Repeals.

10 All acts and parts of acts are repealed insofar as they are  
11 inconsistent with this act.

12 Section 503. Effective date.

13 This act shall take effect in 180 days.