
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1689 Session of
2001

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SURRA, TIGUE, TRELLO, C. WILLIAMS AND YUDICHAK, JUNE 4, 2001

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES, JUNE 4, 2001

AN ACT

1 Providing for use of tobacco settlement moneys for charity
2 health care.

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7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Pennsylvania
11 Charity Care Act.

12 Section 2. Legislative findings.

13 The General Assembly finds that:

14 (1) Hospitals provided over \$840,000,000 in
15 uncompensated care in 1999, a figure that has risen over 5%
16 annually over the past decade.

17 (2) Uncompensated care is clearly related to the ability
18 of patients to pay for care. In turn, the two factors
19 limiting a patient's ability to pay are the lack of insurance
20 coverage and the lack of income. Currently, nearly one of
21 every ten Pennsylvanians does not have health insurance
22 coverage, a figure that has risen over the past five years.

23 (3) We do not have reliable data on the geographic and
24 demographic distribution of the uninsured within this
25 Commonwealth. There are, however, reliable surrogates for the
26 uninsured, including the income data and unemployment data,
27 as well as Medicaid enrollment data.

28 (4) The Medicaid program in this Commonwealth currently
29 provides payments to assist some hospitals with the costs of
30 providing uncompensated care for low-income and uninsured

1 patients. There are three basic funding streams under
2 Medicaid for this purpose. They include inpatient
3 disproportionate share payments, outpatient disproportionate
4 share payments and community access fund provider payments.
5 Of this Commonwealth's 254 acute care hospitals, 128 receive
6 funds through these three programs. Combined Federal and
7 State funds for these hospitals amount to about \$304,000,000,
8 about 56% of the reported cost of uncompensated care at those
9 hospitals receiving assistance. The Federal Government
10 provides slightly more than half of these funds.

11 (5) This Commonwealth does not have a public hospital
12 system to provide charity care. In those states that do run
13 public hospitals, uncompensated care represents about one-
14 third of the total costs for those facilities.

15 (6) On average, the tobacco settlement will provide the
16 Commonwealth approximately \$400,000,000 annually in State
17 revenues. These moneys can be used to supplement, but not
18 supplant, State Medicaid spending. Tobacco settlement moneys
19 channeled through the Medicaid program would be matched with
20 Federal funds.

21 (7) As one of the standards for qualifying as an
22 "institution of purely public charity" under the act of
23 November 26, 1997 (P.L.508, No.55), known as the Institutions
24 of Purely Public Charity Act, an institution must provide
25 uncompensated goods and services equal to 3% or more of its
26 total operating expenses.

27 (8) Providing compensation to hospitals bearing a
28 significant financial burden from uncompensated care permits
29 the continued viability of those institutions and continued
30 access to care for the medically indigent and uninsured.

1 Section 3. Definitions.

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

5 "Charges." The rate or amount billed by a provider for
6 specific goods or services provided to a patient, prior to any
7 adjustment for contractual allowances.

8 "Department." The Department of Public Welfare of the
9 Commonwealth.

10 "Disproportionate share payment." Payments made to
11 qualifying hospitals that serve high volumes or large numbers of
12 Medicaid and indigent care patients under the Pennsylvania
13 Medicaid program, including matching funds made available by the
14 Federal Government pursuant to Title XIX of the Social Security
15 Act (49 Stat. 620, U.S.C. § 301 et seq.). The term shall include
16 any payments made to hospitals for inpatient disproportionate
17 share, outpatient disproportionate share and community access on
18 or before the effective date of this act.

19 "Extraordinary expenses." The cost of hospital inpatient
20 services provided to the uninsured that is in excess of twice
21 that hospital's average cost per stay for all patients.

22 "Fund." The Uncompensated Care Fund created under this act.

23 "Health Care Cost Containment Council." The council created
24 pursuant to the act of July 8, 1986 (P.L.408, No.89), known as
25 the Health Care Cost Containment Act.

26 "Health system." Two or more hospitals operated by a single
27 corporate entity, whether or not each facility operates under an
28 individual or a corporate license.

29 "Hospital." An institution having an organized medical staff
30 which is engaged primarily in providing to inpatients, by or

1 under the supervision of physicians, diagnostic and therapeutic
2 services for the care of injured, disabled, pregnant, diseased
3 or sick or mentally ill persons. The term includes facilities
4 for the diagnosis and treatment of disorders within the scope of
5 specific medical specialties. The term does not include
6 facilities caring exclusively for the mentally ill or patients
7 with behavioral health problems

8 "Hospital service territory." The geographic region used by
9 the Health Care Cost Containment Council to determine the area
10 in which the preponderance of each hospital's patient load
11 resides.

12 "Insurer." An insurance company, association, reciprocal,
13 health maintenance organization, fraternal benefits society or a
14 risk-bearing preferred provider organization that offers health
15 care benefits and is subject to regulation under the act of May
16 17, 1921 (P.L.682, No.284), known as The Insurance Company Law
17 of 1921, or the act of December 29, 1972 (P.L.1701, No.364),
18 known as the Health Maintenance Organization Act. The term shall
19 also include an entity and its subsidiaries that operate subject
20 to the provisions of 40 Pa.C.S. Ch. 61 (relating to hospital
21 plan corporations) or 63 (relating to professional health
22 services plan corporations), or both.

23 "Inpatient day." Each day of an inpatient hospital stay.

24 "Medicaid." The State-administered program operated under
25 sections 443.1, 443.2 and 443.3 of the act of June 13, 1967
26 (P.L.31, No.21), known as the Public Welfare Code.

27 "Medical assistance days." The number of inpatient days
28 provided by a hospital to patients covered by the Medicaid
29 program or similar programs in other states.

30 "Medically indigent." Low-income and moderate-income

1 individuals who either lack health insurance coverage or whose
2 health insurance coverage is insufficient to provide them with
3 adequate coverage for the services that they require or who are
4 enrolled in or are eligible for enrollment in the Medicaid
5 program.

6 "Medicare SSI days." The number of inpatient days provided
7 by a hospital to patients eligible for both Medicare Part A and
8 supplemental security income (SSI) as determined by the Federal
9 Health Care Financing Administration.

10 "Net patient revenue." The aggregate actual payments
11 received by a hospital as compensation for services provided
12 directly to patients. The term does not include revenue from
13 other sources, including payments received from operations such
14 as cafeteria, parking office space rentals, research, education
15 activities, endowments and trust funds.

16 "Payer." A governmental or nongovernmental third-party payer
17 or any other purchaser of hospital services.

18 "Tobacco settlement." The settlement agreement and related
19 documents entered into on November 23, 1998, by the Commonwealth
20 and leading United States tobacco product manufacturers and
21 approved by the court in Commonwealth v. Philip Morris, April
22 Term, 1997, No.2443 (C.P. Philadelphia County), on January 13,
23 1999.

24 "Uncompensated care." Patient care for which a hospital
25 receives no compensation, including the cost of providing free
26 inpatient and outpatient care to the medically indigent, the
27 cost of delivering such care to patients who do not pay some or
28 all of their charity care and other bad debt as defined by
29 regulation of the Department of Public Welfare. The term does
30 not include the difference between negotiated or contractual

1 payments which are below hospital usual and customary charges,
2 other discounts from charges, unpaid balance billing of Medicaid
3 patients or the cost of community service programs, educational
4 programs, outreach programs and other special programs. The term
5 also does not include any overdue Medicare or Medicaid payment
6 owed by the Federal or State Government of any Medicare or
7 Medicaid contractor.

8 "Uncompensated care payment program." The program
9 established under this act to reimburse eligible hospitals for
10 providing uncompensated care and for extraordinary expenses.

11 Section 4. Uncompensated Care Fund.

12 (a) Fund established.--The Uncompensated Care Fund is
13 established in the department as a restricted receipt account.
14 Funds deposited in this account shall be used to make payments
15 to eligible hospitals for uncompensated care and extraordinary
16 medical expenses as determined by this act. Annually a portion
17 of the funds from the tobacco settlement agreement proceeds paid
18 to Pennsylvania shall be deposited into the fund. Eighty-five
19 percent of the tobacco settlement moneys deposited in this fund,
20 including any Federal matching funds, shall be reserved for
21 making payments under section 6(c).

22 (b) Voluntary contributions.--The department may also
23 deposit any other voluntary contributions made by other payers
24 into the fund as received.

25 (c) Disproportionate share payments.--The department shall
26 have the authority, with the consent of the affected hospitals,
27 to deposit Medicaid disproportionate share moneys into the fund
28 and to distribute such funds consistent with this act. In the
29 event that the department receives a waiver from the Federal
30 Health Care Financing Agency under section 9, Medicare

disproportionate share payments may also be deposited into this account and distributed according to the provisions of this act.

Section 5. Powers and duties of department.

The department shall have the following powers and duties:

(1) Administer the uncompensated care payment program.

(2) Collect such data as may be necessary to determine hospital eligibility for uncompensated care payments and the amount of payment to be made to each eligible hospital, including collecting data on uncompensated care from the Health Care Cost Containment Council, data on Medicare SSI days from the Health Care Financing Administration and data on medical assistance inpatient days from the Medicaid program.

(3) Determine eligibility for uncompensated care payments based on the criteria established under this act.

(4) Make uncompensated care payments to eligible hospitals. The department may combine the payments for hospitals that have merged into a single entity and fairly separate payments for a hospital or health system that separates into two or more entities.

(5) Seek Federal matching funds under the Medicaid program to supplement payments under this act.

(6) To develop such rules, regulations, forms and procedures as may be necessary to implement this act.

(7) To negotiate an agreement with affected hospitals to incorporate any and all disproportionate share payments into the uncompensated care payment program.

(8) To audit the financial records of any hospital receiving funds under this act, consistent with the provisions of Federal and State law.

1 Section 6. Payments for uncompensated care.

2 (a) Eligibility requirements.--Annually all hospitals will
3 be ranked based on their uncompensated care levels, which shall
4 be the sum of the following calculations for each hospital:

5 (1) The amount of uncompensated care provided by a
6 hospital as a percentage of net patient revenue based on the
7 most recent data supplied by the Health Care Cost Containment
8 Council.

9 (2) Medicare SSI inpatient days as a percentage of total
10 inpatient days based on the most recent data supplied by the
11 Health Care Financing Administration.

12 (3) Medical assistance inpatient days as a percentage of
13 total inpatient days based on the most recent data available
14 from the Medicaid program.

15 Those hospitals that rank in the top half of all hospitals
16 ranked by their aggregate score shall be eligible for payments.

17 (b) Treatment of missing data.--In the event that data on
18 any individual hospital is unavailable to the department, the
19 department shall determine if, in its judgment, there are
20 extenuating circumstances that prevent that data from being
21 available. If there are extenuating circumstances present, the
22 department may use an average of the two most recent years for
23 which data is available. If there are no extenuating
24 circumstances present, the department shall treat any missing
25 data as though it were reported by that hospital to be zero.

26 (c) Payment methodology.--Eligible hospitals shall receive
27 payments based on the following calculations:

28 (1) Each hospital's uncompensated care sum as determined
29 in subsection (a) shall be multiplied by the three-year
30 average of that hospital's total inpatient days.

1 (2) The results from paragraph (1) shall be totaled.

2 (3) The uncompensated care sum for each hospital shall
3 be divided by the sum determined pursuant to paragraph (2) to
4 determine each eligible hospital's share of the available
5 funds.

6 (4) Determine each eligible hospital's payment by
7 multiplying that hospital's share times the total amount of
8 available funds.

9 (d) Limitations.--In no case shall the payments to an
10 eligible hospital under this act exceed the aggregate cost of
11 inpatient services furnished to recipients, general assistance
12 recipients and the uninsured under Title XIX of the Federal
13 Social Security Act. In no case shall the State funds paid under
14 the uncompensated care payment program in any fiscal year exceed
15 the amount of funds appropriated by the General Assembly to the
16 department and deposited in the fund. The provision of
17 uncompensated care payments under this section shall in no way
18 constitute an entitlement derived from the Commonwealth or a
19 claim on any other funds from the Commonwealth.

20 Section 7. Reimbursement for extraordinary expenses.

21 (a) Applications.--Annually a hospital may apply to the
22 department to receive payment if the hospital provided
23 uncompensated care to individuals with extraordinary expenses
24 and is not eligible to receive payment under section 6. The
25 department shall annually provide every hospital not eligible
26 for payment under section 6 with an application for
27 extraordinary expenses. Hospitals shall receive a payment equal
28 to the cost of the extraordinary expense claim in excess of
29 twice the hospital's average cost per stay for all patients. In
30 the event the total amount of all applications for reimbursement

1 for extraordinary expenses exceeds the amount of funds available
2 for such purpose, each hospital shall receive a prorated amount
3 of its extraordinary expenses.

4 (b) Limitations.--In no event shall the payments to any
5 hospital authorized to receive payment under this section exceed
6 the aggregate cost of services furnished by that hospital to all
7 individuals with extraordinary expenses. In no case shall the
8 aggregate amount of extraordinary expense payments in any fiscal
9 year exceed the amount of the appropriation to the department
10 for the extraordinary expense payment in that fiscal year. The
11 provision of extraordinary expense payments under this act shall
12 in no way constitute an entitlement derived from the
13 Commonwealth or a claim on other funds of the Commonwealth. In
14 the event that, in any fiscal year, any of the funds available
15 under this section are not encumbered, those funds shall be used
16 to provide payments under section 6. No more than 15% of the
17 total funds appropriated in any fiscal year under this act shall
18 be used to provide reimbursement for extraordinary expenses.
19 Section 8. Hospital responsibilities.

20 Every hospital that receives payment under this act shall
21 meet the following requirements:

22 (1) Agree to accept all individuals for treatment
23 regardless of their ability to pay.

24 (2) Agree not to balance bill Medicaid patients or other
25 patients whose household income was at or below 185% of the
26 Federal poverty level.

27 (3) Ensure that any emergency admission or treatment is
28 not delayed, held pending a determination of coverage, or
29 subject to the imposition of prepayment or deposit.

30 (4) Agree to enroll health system-owned physician

1 practices and clinics as Medicaid providers.

2 (5) Attempt to obtain health insurance coverage for any
3 uninsured individual, including assisting individuals in
4 applying for Medicaid or the Children's Health Insurance
5 Program.

6 (6) Have a policy and program in place to seek prompt
7 collection of any claims, including a collection from an
8 insurer or making payment arrangements with the individual
9 responsible for payment for care rendered.

10 (7) Submit a plan to the department for its approval
11 that would assess the ability of low-income individuals,
12 Medicaid beneficiaries and the uninsured residing in that
13 hospital's service territory to access outpatient services.
14 The plan would include a description of how that hospital
15 will ensure broader access to outpatient care and
16 preventative services.

17 (8) Post and otherwise provide notice to patients
18 regarding the availability of medical services and the
19 obligations of hospitals under this act to provide free
20 services.

21 (9) Provide the department and the Health Care Cost
22 Containment Council, within 120 days of the completion of its
23 fiscal year, an audited financial statement that includes a
24 statement as to the level of uncompensated care provided by
25 that hospital.

26 Section 9. Audits.

27 (a) Departmental.--The department may audit the records of
28 any hospital receiving payments under this act to disapprove the
29 allowance of any uncompensated care amount, to determine the
30 reasonableness of any data used in calculating the allocation

1 and distribution system, and otherwise to ensure compliance with
2 this act. The department shall have the authority to order an
3 independent performance audit of the claims management, billing
4 and collection processes of any hospital receiving payments from
5 the fund.

6 (b) Auditor General.--The Auditor General may audit the
7 records of any hospital to determine compliance with this act.
8 Such authority shall include performance and fiscal audit
9 responsibility. The Auditor General shall periodically conduct a
10 random audit of the uncompensated care of a select sample of
11 hospitals and provide the General Assembly and the department
12 with a report on the results of such audits.

13 Section 10. Waiver request.

14 The department, in cooperation with representatives of the
15 hospital industry, shall develop an application to request a
16 waiver by the Federal Health Care Financing Agency to allow
17 Medicare disproportionate share payments made to Commonwealth
18 hospitals to be deposited into the fund.

19 Section 11. Availability of uncompensated care funds.

20 No hospital shall advertise by any means the availability of
21 uncompensated care, its designation as a hospital qualifying for
22 uncompensated care funding or the receipt of moneys from the
23 fund.

24 Section 12. Data compliance and reporting.

25 The department and the Health Care Cost Containment Council
26 may adopt policies and regulations to improve the accuracy,
27 consistency and timeliness of the data required to implement
28 this act. All data used to qualify hospitals for payment and to
29 distribute funds shall be available to the public.

30 Section 13. Reports.

1 The department shall annually report to the General Assembly
2 the following information:

3 (1) The name, address and amount of uncompensated care
4 provided by each hospital in this Commonwealth.

5 (2) The amount paid to each qualifying hospital from the
6 fund.

7 (3) Deposits into and disbursements from the fund.

8 (4) Any other information the department deems relevant
9 and useful.

10 Section 14. Evaluation.

11 Beginning no later than two years after the effective date of
12 this act, the Legislative Budget and Finance Committee shall
13 conduct an evaluation of the qualification and payment methods
14 used in this act. The committee shall establish a working
15 advisory committee comprised of individuals with expertise in
16 hospital administration, hospital finance and reimbursement,
17 hospital accounting, hospital patient accounts management and
18 representatives of the department and the Health Care Cost
19 Containment Council. The committee shall make recommendations as
20 needed to the General Assembly on changes to the methodologies
21 and formulas contained in this act.

22 Section 15. Appropriation.

23 The sum of \$60,000,000 is hereby appropriated to the
24 Department of Public Welfare from the payments received by the
25 Commonwealth pursuant to the tobacco settlement for the fiscal
26 year July 1, 2001, to June 30, 2002, to carry out the provisions
27 of this act.

28 Section 16. Expiration.

29 This act shall expire five years after the effective date of
30 this section, unless otherwise extended.

1 Section 17. Effective date.

2 This act shall take July 1, 2001.