

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1621 Session of
2013

INTRODUCED BY CHRISTIANA, FRANKEL, V. BROWN, GRELL,
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SNYDER, TOOHIL, MOLCHANY, BARBIN, BENNINGHOFF, READSHAW,
WHEATLEY, DERMODY, D. MILLER, PARKER, MCGINNIS, GODSHALL,
P. DALEY, CALTAGIRONE, MICCARELLI AND C. HARRIS,
OCTOBER 15, 2013

REFERRED TO COMMITTEE ON HEALTH, OCTOBER 15, 2013

AN ACT

1 Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An
2 act relating to health care; prescribing the powers and
3 duties of the Department of Health; establishing and
4 providing the powers and duties of the State Health
5 Coordinating Council, health systems agencies and Health Care
6 Policy Board in the Department of Health, and State Health
7 Facility Hearing Board in the Department of Justice;
8 providing for certification of need of health care providers
9 and prescribing penalties," further providing for
10 definitions, for licensure and for issuance of license; and
11 providing for confidentiality.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Section 802.1 of the act of July 19, 1979
15 (P.L.130, No.48), known as the Health Care Facilities Act, is
16 amended by adding definitions to read:

17 Section 802.1. Definitions.

18 The following words and phrases when used in this chapter
19 shall have, unless the context clearly indicates otherwise, the
20 meanings given them in this section:

1 * * *

2 "Default provider agreement." An agreement between a
3 hospital that is part of an integrated delivery network and a
4 willing health insurance carrier to provide health care
5 services, which agreement is imposed upon the parties in the
6 event that they fail to enter into a mutually agreeable
7 contract.

8 * * *

9 "Health insurance carrier." An entity licensed in this
10 Commonwealth to issue health insurance, subscriber contracts,
11 certifications or plans that provide medical or health care
12 coverage by a health care facility or licensed health care
13 provider that is offered or governed under this act or any of
14 the following:

15 (1) The act of December 29, 1972 (P.L.1701, No.364),
16 known as the "Health Maintenance Organization Act."

17 (2) The act of May 18, 1976 (P.L.123, No.54), known as
18 the "Individual Accident and Sickness Insurance Minimum
19 Standards Act."

20 (3) 40 Pa.C.S. Chs. 61 (relating to hospital plan
21 corporations) and 63 (relating to professional health
22 services plan corporations).

23 * * *

24 "Integrated delivery network." One or more entities with
25 common ownership, operation or control, which include both of
26 the following:

27 (1) One or more hospitals, one or more physician
28 practices and/or one or more health care providers offering
29 health care services.

30 (2) One or more entities operating as a health insurance

1 carrier offering health insurance, administering health
2 benefits, operating a health maintenance organization and/or
3 offering other health care benefits and coverage to employers
4 and/or individuals in this Commonwealth.

5 Section 2. Section 806 of the act is amended by adding a
6 subsection to read:

7 Section 806. Licensure.

8 * * *

9 (j) Hospitals operating as part of an integrated delivery
10 network.--

11 (1) In addition to complying with the standards and
12 regulations promulgated under this section, hospitals
13 operating as part of an integrated delivery network or any
14 entity directly or indirectly owned, operated or controlled
15 as part of these entities shall contract with any health
16 insurance carrier that is willing to enter into a contract.

17 (2) When contracting with health insurance carriers,
18 hospitals operating as part of an integrated delivery network
19 shall be:

20 (i) prohibited from using contractual provisions and
21 engaging in business practices that impede the
22 availability of health care and that restrict access to
23 facilities based solely on the type of insurance coverage
24 offered by a health insurance carrier;

25 (ii) prohibited from incorporating contractual
26 provisions that limit or preclude the use of tiered
27 networks by health insurance carriers;

28 (iii) prohibited from using any portion of the
29 reimbursement rate to subsidize a health insurance
30 carrier operating as part of the same integrated delivery

1 network;

2 (iv) prohibited from incorporating a termination
3 provision with a health insurance carrier for reasons
4 other than a willful breach of contract; and

5 (v) permitted to contract for its services at
6 reimbursement rates that are based upon sound actuarial
7 data.

8 (3) Failure of any hospital operating as part of an
9 integrated delivery network and a willing health insurance
10 carrier to maintain a mutually agreeable contract shall
11 result in the parties entering into a default provider
12 agreement while they submit to mandatory binding arbitration.
13 The default provider agreement shall set forth payment terms,
14 while all other contractual terms of the previously executed
15 contract shall remain in effect until the arbitration process
16 is completed. The arbitrator shall set all terms of the new
17 contract.

18 (4) Failure of any newly affiliated hospital with an
19 existing integrated delivery network or failure of any
20 hospital operating as part of a newly formed integrated
21 delivery network and a willing health insurance carrier to
22 enter into a mutually agreeable contract within 90 days of
23 the affiliation or formation shall result in the parties
24 submitting to mandatory binding arbitration to establish a
25 contract. The arbitrator shall set all terms of the new
26 contract.

27 (5) A mutually agreeable arbitrator shall be chosen by
28 the parties from the American Arbitration Association's
29 National Healthcare Panel of arbitrators experienced in
30 handling payor-provider disputes.

1 (6) All costs associated with the arbitration shall be
2 split equally between the parties.

3 (7) The arbitrator shall conduct the arbitration
4 pursuant to the American Arbitration Association's Healthcare
5 Payor Provider Arbitration Rules.

6 (8) Contract terms and conditions shall be established
7 as follows:

8 (i) Each party shall submit best and final contract
9 terms to the arbitrator.

10 (ii) The arbitrator may request the production of
11 documents, data and other information.

12 (iii) Payment terms and all other contractual
13 provisions shall be set by the arbitrator.

14 (9) The default provider agreement shall remain in
15 effect until the hospital operating as part of an integrated
16 delivery network and a willing health insurance carrier
17 complete the arbitration process.

18 (10) Payment terms under the default provider agreement
19 will be set according to an amount equal to the greatest of
20 the following three possible amounts:

21 (i) The amount the health insurance carrier
22 negotiated with other in-network hospitals for the same
23 service.

24 (ii) The amount calculated by the same method the
25 health insurance carrier uses to determine payments for
26 out-of-network services, such as the usual, customary and
27 reasonable charge.

28 (iii) The amount that would be paid under Medicare
29 for the same services.

30 (11) Copies of all contracts between hospitals operating

1 as part of an integrated delivery network and all health
2 insurance carriers shall be provided to the department and
3 the Insurance Department.

4 Section 3. Section 808(a) of the act, amended December 22,
5 2011 (P.L.563, No.122), is amended and the section is amended by
6 adding subsections to read:

7 Section 808. Issuance of license.

8 (a) Standards.--The department shall issue a license to a
9 health care provider when it is satisfied that the following
10 standards have been met:

11 (1) that the health care provider is a responsible
12 person;

13 (2) that the place to be used as a health care facility
14 is adequately constructed, equipped, maintained and operated
15 to safely and efficiently render the services offered;

16 (3) that the health care facility provides safe and
17 efficient services which are adequate for the care, treatment
18 and comfort of the patients or residents of such facility;

19 (4) that there is substantial compliance with the rules
20 and regulations adopted by the department pursuant to this
21 act;

22 (5) that a certificate of need has been issued if one is
23 necessary; [and]

24 (6) that, in the case of abortion facilities, such
25 facility is in compliance with the requirements of 18 Pa.C.S.
26 Ch. 32 (relating to abortion) and such regulations
27 promulgated thereunder[.]; and

28 (7) that, in the case of a hospital operating as part of
29 an integrated delivery network, such facility:

30 (i) has contracts with all willing health insurance

1 carriers;

2 (ii) does not place restrictive covenants in its
3 employment contracts that restrain any health care
4 practitioner from engaging in his lawful profession; and

5 (iii) has submitted an attestation statement to the
6 department and the Insurance Department certifying that
7 no portion of any reimbursement rate with a health
8 insurance carrier is subsidizing the health insurance
9 carrier operating as part of the same integrated delivery
10 network.

11 * * *

12 (d) Methodology records.--Every hospital submitting an
13 attestation statement in accordance with this section must keep
14 all books, records, accounts, papers, documents and any or all
15 computer or other recordings relating to its methodology for
16 developing reimbursement rates for every health insurance
17 carrier in such manner and for such time periods as the
18 department, in its discretion, may require in order that its
19 authorized representatives may readily verify that no portion of
20 any reimbursement rate is subsidizing the health insurance
21 carrier operating as part of the same integrated delivery
22 network.

23 (e) Survey.--The department or any of its surveyors may
24 conduct a survey under this section of any hospital operating as
25 part of an integrated delivery network as often as the
26 secretary, in his sole discretion, deems appropriate.

27 (f) Survey expenses.--When conducting a survey under this
28 section, the department may retain attorneys, independent
29 actuaries, independent certified public accountants or other
30 professionals and specialists as surveyors. All expenses

1 incurred in and about the survey of any hospital, including
2 compensation of department or Insurance Department employees
3 assisting in the survey and any other professionals or
4 specialists retained in accordance with this section shall be
5 charged to and paid by the hospital surveyed in such a manner as
6 the secretary shall by regulation provide.

7 Section 4. The act is amended by adding a section to read:
8 Section 902.2. Confidentiality.

9 (a) Received materials.--Any insurance contracts, documents,
10 materials or information received by the department or Insurance
11 Department from a hospital for the purpose of compliance with
12 this act and any regulations developed pursuant to this act
13 shall be confidential.

14 (b) Access.--The department may use the information under
15 section 806 and any regulations developed pursuant to this act
16 for the sole purpose of a licensure or corrective action against
17 a health care facility.

18 (c) Right-to-know requests.--Any insurance contracts,
19 documents, materials or information made confidential under this
20 act shall not be subject to requests under the act of February
21 14, 2008 (P.L.6, No.3), known as the "Right-to-Know Law."

22 Section 5. This act shall take effect in 90 days.