

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1440 Session of
1998

INTRODUCED BY TOMLINSON, KUKOVICH, HOLL, JUBELIRER, EARLL, FUMO,
PICCOLA, LOEPER, HELFRICK, BODACK, SCHWARTZ, CONTI,
STAPLETON, THOMPSON, WHITE, GERLACH, MURPHY, SALVATORE AND
O'PAKE, APRIL 29, 1998

REFERRED TO AGING AND YOUTH, APRIL 29, 1998

AN ACT

1 Amending the act of December 2, 1992 (P.L.741, No.113), entitled
2 "An act providing a comprehensive plan for health care for
3 uninsured children; providing for medical education
4 assistance; making appropriations; and making repeals,"
5 further providing for legislative findings and intent, for
6 definitions, for children's health care, for outreach, for
7 payor of last resort and for limitation on expenditure of
8 funds.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 102(6) of the act of December 2, 1992
12 (P.L.741, No.113), known as the Children's Health Care Act, is
13 amended to read:

14 Section 102. Legislative findings and intent.

15 The General Assembly finds and declares as follows:

16 * * *

17 [(6) Although the proper implementation of spenddown
18 provisions under medical assistance should result in the
19 provision of the vast majority of all hospital care for the
20 uninsured through the medical assistance program, hospitals

1 vary widely in the application of the spenddown provision so
2 patients can qualify for medical assistance.]

3 * * *

4 Section 2. The definitions of "child," "department,"
5 "grantee," "management team," "secretary" and "spenddown" in
6 section 103 of the act are amended and the section is amended by
7 adding a definition to read:

8 Section 103. Definitions.

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

12 "Child." A person under [13] 19 years of age[, except as
13 provided for in section 701(d)].

14 * * *

15 "Contractor." An entity awarded a contract under Chapter 7
16 to provide health care services under this act. The term
17 includes an entity and its subsidiary which is established under
18 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations) or 63
19 (relating to professional health services plan corporations);
20 the act of May 17, 1921 (P.L.682, No.284), known as The
21 Insurance Company Law of 1921; or the act of December 29, 1972
22 (P.L.1701, No.364), known as the Health Maintenance Organization
23 Act.

24 * * *

25 ["Department." The Department of Public Welfare of the
26 Commonwealth.]

27 * * *

28 ["Grantee." An entity selected by the management team to
29 receive a grant under Chapter 7. The term includes an entity,
30 and its subsidiary, which is established under 40 Pa.C.S. Ch. 61

1 (relating to hospital plan corporations) or 63 (relating to
2 professional health services plan corporations); the act of May
3 17, 1921 (P.L.682, No.284), known as The Insurance Company Law
4 of 1921; or the act of December 29, 1972 (P.L.1701, No.364),
5 known as the Health Maintenance Organization Act.]

6 * * *

7 ["Management team." The Children's Health Insurance
8 Management Team established in section 701(f).]

9 * * *

10 ["Secretary." The Secretary of the Department of Health.
11 "Spenddown." A qualifying procedure for medical assistance
12 set forth in 55 Pa. Code Ch. 181 (relating to income provisions
13 for categorically needy NMP-MA and MNO-MA).]

14 * * *

15 Section 3. Sections 701, 702, 703 and 3101 of the act are
16 amended to read:

17 Section 701. Children's health care.

18 (a) Dedicated funding.--The fund shall be dedicated
19 exclusively for distribution by the [management team for]
20 Insurance Department through contracts in order to provide free
21 and subsidized health care services under this section and to
22 develop and implement outreach activities required under section
23 702.

24 (b) Distribution of fund.--

25 (1) The fund shall be used to fund health care services
26 for children as specified in this section. The [management
27 team] Insurance Department shall assure that the program is
28 implemented Statewide. All [grants made] contracts awarded
29 under this section shall be [on an equitable basis, based on
30 the number of enrolled eligible children or on eligible

1 children anticipated to be enrolled.] awarded through a
2 competitive procurement process. The [management team]
3 Insurance Department shall use its best efforts to [provide
4 grants that] ensure that eligible children across this
5 Commonwealth have access to health care services to be
6 provided under this act.

7 (2) No more than 7.5% of the [grant] amount of the
8 contract may be used for administrative expenses of the
9 [grantees] contractor. If, after the first three full years
10 of operation, any [grantee] contractor presents documented
11 evidence that administrative expenses are in excess of 7.5%
12 of the [grant] amount of the contract, the [management team]
13 Insurance Department may make an additional allotment of
14 funds, not to exceed 2.5% of the [grant] amount of the
15 contract, for future administrative expenses to the [grantee]
16 contractor to the extent that the [management team] Insurance
17 Department finds the expenses reasonable and necessary.

18 (3) No less than 70% of the fund shall be used to
19 provide the health care services provided under this act for
20 children eligible for free care under subsection (d). When
21 the [management team] Insurance Department determines that
22 70% of the fund is not needed in order to achieve maximum
23 enrollment of children eligible for free care and promulgates
24 a final form regulation, with proposed rulemaking omitted,
25 this paragraph shall expire.

26 [(4) The management team shall submit a budget request
27 for General Fund money necessary for the operation of the
28 council and the management team.

29 (5)] (4) To ensure that inpatient hospital care is
30 provided to eligible children, each primary care physician

1 providing primary care services shall make necessary
2 arrangements for admission to the hospital and for necessary
3 specialty care. [for a child needing the care and shall
4 continue to care for the child as a medical assistance
5 provider in the hospital as appropriate. When appropriate,
6 the grantee, the enrollee and the hospital shall initiate
7 applications for medical assistance for inpatient hospital
8 care through spenddown. Payments made under this paragraph
9 shall be limited to the amount by which the child's family
10 income exceeds the Medically Needy Income Level, also known
11 as the spenddown amount, under medical assistance. Payments
12 made under this paragraph shall be considered reimbursement
13 of costs under another public program of the State for
14 medical assistance purposes as specified in section
15 1902(a)(17) of the Social Security Act (Public Law 74-271, 42
16 U.S.C. § 1396a(a)(17)).]

17 (c) Eligibility for enrollment in programs receiving funding
18 through fund.--

19 (1) Any organization or corporation receiving funds from
20 the [management team] Insurance Department to provide
21 coverage of health care services shall enroll, to the extent
22 that funds are available, any child who meets all of the
23 following:

24 (i) Except for newborns, has been a resident of this
25 Commonwealth for at least 30 days prior to enrollment.

26 (ii) Is not covered by a health insurance plan, a
27 self-insurance plan or a self-funded plan or is not
28 eligible for or covered by medical assistance.

29 (iii) Is qualified based on income under subsection

30 (d) or (e).

1 [(iv) Has not refused to cooperate with the grantee
2 or the hospital as provided in subsection (b)(5).]

3 (iv) Meets the citizenship requirements of the
4 Medicaid program administered by the Department of Public
5 Welfare.

6 (2) Enrollment may not be denied on the basis of a
7 preexisting condition, nor may diagnosis or treatment for the
8 condition be excluded based on the condition's preexistence.

9 (d) Free insurance.--The provision of health care insurance
10 for eligible children shall be free to a child under [six] 19
11 years of age whose family income is no greater than [185%] 200%
12 of the Federal poverty level. [and shall be free to a child six
13 years of age but less than the maximum program age whose family
14 income is no greater than 100% of the Federal poverty level,
15 where the maximum program age shall be:

16 (1) 13 years of age for the period ending September 30,
17 1993;

18 (2) 14 years of age for the period ending September 30,
19 1994;

20 (3) 15 years of age for the period ending September 30,
21 1995;

22 (4) 16 years of age for the period ending September 30,
23 1996; and

24 (5) 17 years of age thereafter.]

25 (e) Subsidized insurance.--

26 (1) The provision of health care insurance for an
27 eligible child who is under [six] 19 years of age and whose
28 family income is greater than [185%] 200% of the Federal
29 poverty level but no greater than 235% of the Federal poverty
30 level may be subsidized by the fund at a rate not to exceed

1 50%.

2 (2) The difference between the pure premium of the
3 minimum benefit package in subsection (1)(7) and the subsidy
4 provided under this subsection shall be the amount paid by
5 the family of the eligible child purchasing the minimum
6 benefit package.

7 [(3)] (e.1) Purchase of insurance.--The family of an
8 eligible child whose family income makes the child eligible
9 for free or subsidized care but who cannot receive care due
10 to lack of funds in the fund may purchase coverage for the
11 child at cost.

12 [(f) Duties of management team.--The Children's Health
13 Insurance Management Team, comprised of the Secretary of the
14 Budget, the Secretary of Health and the Insurance Commissioner,
15 is established. The management team shall:

16 (1) Prepare and approve a budget using the amounts
17 collected from the fund and any other Federal or private
18 funds designated for the fund.

19 (2) Execute contracts related to expanding access to
20 health care services for eligible children as provided in
21 this act.

22 (3) Promulgate regulations necessary for the
23 implementation and administration of this chapter.]

24 (g) Duties of Insurance Department.--The Insurance
25 Department shall:

26 [(1) Annually approve insurance rates requested by any
27 grantee for the coverage of services specified in this act.]

28 (1) Administer the children's health care program
29 pursuant to this act.

30 (2) Review all bids and approve and execute all

1 contracts [executed] for the purpose of expanding access to
2 health care services for eligible children as provided for in
3 this chapter.

4 (3) Conduct monitoring and oversight [by any] of
5 contracts entered into.

6 (4) Issue an annual report to the Governor, the General
7 Assembly and the public for each fiscal year outlining
8 primary health services funded for the year, detailing the
9 outreach and enrollment efforts [by each grantee], and
10 reporting by county the number of children receiving health
11 care services from the fund, the projected number of eligible
12 children and the number of eligible children on waiting lists
13 for health care services.

14 (5) In consultation with appropriate Commonwealth
15 agencies, coordinate the development and supervision of the
16 outreach plan required under section 702.

17 (6) In consultation with appropriate Commonwealth
18 agencies, monitor, review and evaluate the adequacy,
19 accessibility and availability of services delivered to
20 children who are enrolled in the health insurance program
21 established under this chapter.

22 (g.1) Regulatory authority.--The Insurance Department may
23 promulgate regulations necessary for the implementation and
24 administration of this chapter.

25 [(h) Duties of Department of Health.--The Department of
26 Health shall:

27 (1) Provide for staff for assisting the council in
28 carrying out its duties.

29 (2) Coordinate and supervise the enrollment outreach
30 activities related to the health insurance program

1 established under this chapter.

2 (3) Monitor, review and evaluate the adequacy,
3 accessibility and availability of services delivered to
4 children who are enrolled in the health insurance program
5 established under this chapter.]

6 (i) Council.--The Children's Health Advisory Council is
7 established within the [Department of Health] Insurance
8 Department as an advisory council.

9 (1) The council shall consist of [12] 14 voting members.
10 Members provided for in subparagraphs (iv), (v), (vi), (vii)
11 [and (viii)], (viii), (x) and (xi) shall be appointed by the
12 [secretary] Insurance Commissioner. The council shall be
13 geographically balanced on a Statewide basis and shall
14 include:

15 (i) The Secretary of Health ex officio or a
16 designee.

17 (ii) The Insurance Commissioner ex officio or a
18 designee.

19 (iii) The Secretary of Public Welfare ex officio or
20 a designee.

21 (iv) A representative with experience in children's
22 health from a school of public health located in this
23 Commonwealth.

24 (v) A physician with experience in children's health
25 appointed from a list of three qualified persons
26 recommended by the Pennsylvania Medical Society.

27 (vi) A representative of a children's hospital or a
28 hospital with a pediatric outpatient clinic appointed
29 from a list of three persons submitted by the Hospital
30 Association of Pennsylvania.

1 (vii) A parent of a child who receives primary
2 health care coverage from the fund. [The initial
3 appointment shall be a parent of a child who is eligible
4 to receive primary health care coverage from the fund.]

5 (viii) A midlevel professional appointed from lists
6 of names recommended by Statewide associations
7 representing midlevel health professionals.

8 (ix) [The chairman and the minority chairman of the
9 Public Health and Welfare Committee of the Senate and the
10 chairman and the minority chairman of the Health and
11 Welfare Committee of the House of Representatives ex
12 officio or their designees.] A senator appointed by the
13 President pro tempore of the Senate, a senator appointed
14 by the minority leader of the Senate, a representative
15 appointed by the Speaker of the House of Representatives
16 and a representative appointed by the minority leader of
17 the House of Representatives.

18 (x) A representative from a private foundation.

19 (xi) A representative of business.

20 (2) [All initial appointments to the council shall be
21 made within 60 days of the effective date of this act, and
22 the council shall commence operations immediately
23 thereafter.] If any specified organization should cease to
24 exist or fail to make a recommendation within 90 days of a
25 request to do so, the council shall specify a new equivalent
26 organization to fulfill the responsibilities of this section.

27 (3) The [Secretary of Health] Insurance Commissioner
28 shall chair the council. The members of the council shall
29 annually elect, by a majority vote of the members, a vice
30 chairperson from among the members of the council.

1 (4) The presence of [seven] eight members shall
2 constitute a quorum for the transacting of any business. Any
3 act by a majority of the members present at any meeting at
4 which there is a quorum shall be deemed to be that of the
5 council.

6 (5) All meetings of the council shall be conducted
7 pursuant to the act of July 3, 1986 (P.L.388, No.84), known
8 as the Sunshine Act, unless otherwise provided in this
9 section. The council shall meet at least [quarterly during
10 its first year of operation and annually thereafter] annually
11 and may provide for special meetings as it deems necessary.
12 Meeting dates shall be set by a majority vote of members of
13 the council or by call of the chairperson upon seven days'
14 notice to all members. The council shall publish [a schedule
15 of] notice of its meetings in the Pennsylvania Bulletin.
16 [Notice shall be published at least once in each calendar
17 quarter and shall list a schedule of meetings of the council
18 to be held in the subsequent calendar quarter.] Notice shall
19 specify the date, time and place of the meeting and shall
20 state that the council's meetings are open to the general
21 public. All action taken by the council shall be taken in
22 open public session and shall not be taken except upon a
23 majority vote of the members present at a meeting at which a
24 quorum is present.

25 (6) The members of the council shall not receive a
26 salary or per diem allowance for serving as members of the
27 council but shall be reimbursed for actual and necessary
28 expenses incurred in the performance of their duties.

29 (7) Terms of council members shall be as follows:

30 (i) The appointed members shall serve for a term of

1 three years and shall continue to serve thereafter until
2 their successors are appointed.

3 (ii) An appointed member shall not be eligible to
4 serve more than two full consecutive terms of three
5 years. Vacancies shall be filled in the same manner in
6 which they were designated within 60 days of the vacancy.

7 (iii) An appointed member may be removed by the
8 appointing authority for just cause and by a vote of at
9 least seven members of the council.

10 (8) The council shall review [and comment on the
11 outreach plan submitted by any potential grantee as specified
12 in section 702] outreach activities and may make
13 recommendations to the Insurance Department.

14 (9) [In conjunction with the Department of Health, the]
15 The council shall review and evaluate the accessibility and
16 availability of services delivered to children enrolled in
17 the program.

18 [(j) Grant criteria.--The management team shall annually
19 solicit applications for grants to be made pursuant to this
20 section]

21 (j) Criteria.--The Insurance Department shall solicit bids
22 and award contracts through a competitive procurement process
23 pursuant to the following:

24 (1) To the fullest extent practicable, [grants shall be
25 made to applicants] contracts shall be awarded to entities
26 that contract with providers to provide primary care services
27 for enrollees on a cost-effective basis. The [management
28 team] Insurance Department shall require [grantees]
29 contractors to use appropriate cost-management methods so
30 that the fund can be used to provide the basic primary

benefit services to the maximum number of eligible children and, whenever possible, to pursue and utilize available public and private funds. [This shall include contracting with qualified, cost-effective providers, including hospital outpatient departments, HMO's, managed care providers, clinics, group practices and individual practitioners.]

(2) To the fullest extent practicable, the [management team shall ensure that any grantee who determines that a child is not eligible because the child is eligible for medical assistance provide in writing to the family of the child the telephone number of the county assistance office where the family can call to apply for medical assistance.]

Insurance Department shall require that any contractor comply with all procedures relating to coordination of benefits as required by the Insurance Department or the Department of Public Welfare.

(3) Contracts may be for a term of up to three years.

(k) Health service corporations and hospital plan corporations.--[Within 90 days of the effective date of this act] Upon receipt of a request for proposal from the Insurance Department, each health [service] plan corporation [and hospital plan corporation] or its entities doing business in this Commonwealth shall [apply] submit a bid to the Insurance Department [for funds from the fund] to carry out the purposes of this section in the area serviced by the corporation.

(l) Contracts.--[Any grantee] A contractor with whom the Insurance Department enters into a contract shall do the following:

(1) Ensure to the maximum extent possible that eligible children have access to primary health care physicians and

1 nurse practitioners on an equitable Statewide basis.

2 (2) Contract with qualified, cost-effective providers,
3 which may include primary health care physicians, nurse
4 practitioners, clinics and health maintenance organizations,
5 to provide primary and preventive health care for enrollees
6 on a basis best calculated to manage the costs of the
7 services, including, but not limited to, using managed health
8 care techniques and other appropriate medical cost management
9 methods.

10 (3) Ensure that the family of a child who may be
11 eligible for medical assistance receives assistance in
12 applying for medical assistance, including, at a minimum,
13 written notice of the telephone number and address of the
14 county assistance office where the family can apply for
15 medical assistance.

16 (4) Maintain waiting lists of children financially
17 eligible for benefits who have applied for benefits but who
18 were not enrolled due to lack of funds.

19 (5) Strongly encourage all providers who provide primary
20 care to eligible children to participate in medical
21 assistance as qualified EPSDT providers and to continue to
22 provide care to children who become ineligible for payment
23 under the fund but who qualify for medical assistance.

24 [(6) Report annually to the management team and the
25 General Assembly by county and by the provider type on the
26 number of primary care providers providing primary care to
27 eligible children.]

28 (7) Provide the following minimum benefit package for
29 eligible children:

30 (i) Preventive care. This subparagraph includes

1 well-child care visits in accordance with the schedule
2 established by the American Academy of Pediatrics and the
3 services related to those visits, including, but not
4 limited to, immunizations, health education, tuberculosis
5 testing and developmental screening in accordance with
6 routine schedule of well-child visits. Care shall also
7 include a comprehensive physical examination, including
8 X-rays if necessary, for any child exhibiting symptoms of
9 possible child abuse.

10 (ii) Diagnosis and treatment of illness or injury,
11 including all medically necessary services related to the
12 diagnosis and treatment of sickness and injury and other
13 conditions provided on an ambulatory basis, such as
14 laboratory tests, wound dressing and casting to
15 immobilize fractures.

16 (iii) Injections and medications provided at the
17 time of the office visit or therapy; and outpatient
18 surgery performed in the office, a hospital or
19 freestanding ambulatory service center, including
20 anesthesia provided in conjunction with such service or
21 during emergency medical service.

22 (iv) Emergency accident and emergency medical care.

23 (v) Prescription drugs [with a copayment of \$5 per
24 prescription].

25 (vi) Emergency, preventive and routine dental care.
26 This subparagraph does not include orthodontia or
27 cosmetic surgery.

28 (vii) Emergency, preventive and routine vision care,
29 including the cost of corrective lenses and frames, not
30 to exceed two prescriptions per year.

1 (viii) Emergency, preventive and routine hearing
2 care.

3 (ix) Inpatient hospitalization up to 90 days per
4 year for eligible children. [who cannot qualify through
5 spenddown provisions for benefits under the medical
6 assistance program.

7 (x) Spenddown amount as provided for in subsection
8 (b)(5).]

9 (8) Each [grantee] contractor shall provide an insurance
10 identification card to each eligible child covered under [a
11 program receiving grants from the fund] contracts executed
12 under this act. The card must not specifically identify the
13 holder as low income.

14 (m) Waiver.--The [department] Insurance Department may grant
15 a waiver of the minimum benefit package of subsection (1)(7)
16 upon demonstration by the applicant that it is providing health
17 care services for eligible children that meet the purposes and
18 intent of this section.

19 [(n) Insurance rate filing request information.--The
20 Insurance Commissioner shall make a copy of and forward to the
21 council all relevant information and data filed by each health
22 service corporation and hospital plan corporation doing business
23 in this Commonwealth, or by any other grantee, as part of an
24 insurance rate filing request for programs receiving grants
25 under this section.]

26 (o) Review.--After the first year of operation and
27 periodically thereafter, the [management team] Insurance
28 Department, in consultation with appropriate Commonwealth
29 agencies, shall review enrollment patterns for both the free
30 insurance program and the subsidized insurance program. The

1 [management team] Insurance Department shall consider the
2 relationship, if any, among enrollment, enrollment fees, income
3 levels and family composition. Based on the results of this
4 study and the availability of funds, the [management team]
5 Insurance Department is authorized to adjust the maximum income
6 ceiling for free insurance and the maximum income ceiling for
7 subsidized insurance by regulation. In no event, however, shall
8 the maximum income ceiling for free insurance be raised above
9 [185%] 200% of the Federal poverty level, nor shall the maximum
10 income ceiling for subsidized insurance be raised above 235% of
11 the Federal poverty level. Changes in the maximum income ceiling
12 shall be promulgated as a final-form regulation with proposed
13 rulemaking omitted in accordance with the act of June 25, 1982
14 (P.L.633, No.181), known as the Regulatory Review Act.

15 Section 702. Outreach.

16 [(a) Plan.--Any entity seeking funding from the fund for
17 providing services under this chapter shall provide not less
18 than 2.5% of the grant award in in-kind services for outreach
19 and shall submit as part of its application to the management
20 team an outreach plan aimed at enrolling eligible children in
21 the program established under this chapter.]

22 (a) Plan.--The Insurance Department, in consultation with
23 appropriate Commonwealth agencies, shall coordinate the
24 development of an outreach plan to inform potential contractors,
25 providers and enrollees regarding eligibility and available
26 benefits. The plan shall include provisions for reaching special
27 populations, including nonwhite and non-English-speaking
28 children and children with disabilities; for reaching different
29 geographic areas, including rural and inner-city areas; and for
30 assuring that special efforts are coordinated within the overall

1 outreach activities throughout this Commonwealth.

2 (b) Review.--The council shall review the outreach [plan and
3 the performance of the entities receiving funding from the fund
4 at reasonable intervals and recommend changes in the plan or in
5 the implementation of the plan as it deems in the best interests
6 of the children to be served. Outreach activities shall continue
7 as long as the fund is in existence. In no instance may a
8 grantee be required to provide in excess of 2.5% of the grant
9 award in in-kind services for outreach.

10 (c) Private funding for outreach activities.--The council,
11 in conjunction with the grantees, the Insurance Department, the
12 Department of Education, the Department of Health and the
13 department shall seek funding from private foundations, Federal
14 agencies and other funding sources for the development and
15 implementation of the outreach plan.] activities and recommend
16 changes as it deems in the best interests of the children to be
17 served.

18 Section 703. Payor of last resort; insurance coverage.

19 The [grantee] contractor shall not pay any claim on behalf of
20 an enrolled child unless all other Federal, State, local or
21 private resources available to the child or the child's family
22 are utilized first. The Insurance Department, in cooperation
23 with the Department of Public Welfare, shall determine that no
24 other insurance coverage is available to the child through a
25 custodial or noncustodial parent on an employment-related or
26 other group basis. If such insurance coverage is available, the
27 Insurance Department shall reevaluate the child's eligibility
28 under section 701.

29 Section 3101. Limitation on expenditure of funds.

30 In no case shall the total amount of annual [grant] contract

1 awards authorized in Chapter 7 exceed the amount of cigarette
2 tax receipts annually deposited into the fund pursuant to
3 section 1296 of the act of March 4, 1971 (P.L.6, No.2), known as
4 the Tax Reform Code of 1971, and any other Federal or [private]
5 State funds received through the fund. The provision of
6 children's health care through the fund shall in no way
7 constitute an entitlement derived from the Commonwealth or a
8 claim on any other funds of the Commonwealth.

9 Section 4. All entities receiving grants on the effective
10 date of this act shall continue to receive funds and provide
11 services as required under this act until notice is received
12 from the Insurance Department.

13 Section 5. This act shall expire July 1, 2003.

14 Section 6. This act shall take effect immediately.