
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2052 Session of
2011

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REESE, ROAE, SAINATO, SAYLOR, M. SMITH, S. H. SMITH, SONNEY,
STERN, STEVENSON, TURZAI, VEREB, WHEATLEY AND WHITE,
DECEMBER 9, 2011

REFERRED TO COMMITTEE ON INSURANCE, DECEMBER 9, 2011

AN ACT

1 Amending Title 40 (Insurance) of the Pennsylvania Consolidated
2 Statutes, in hospital plan corporations, further providing
3 for rates and contracts.

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

6 Section 1. Section 6124(c) of Title 40 of the Pennsylvania
7 Consolidated Statutes is amended to read:

8 § 6124. Rates and contracts.

9 * * *

10 (c) Maintenance of contractual relationships.--

11 (1) Declaration of necessity.--It is hereby found that
12 many subscribers to nonprofit hospital plans make payments
13 over long periods of time prior to becoming entitled to
14 benefits under such a plan and that it is important in the

1 public interest that the reasonable expectations of such
2 subscribers as to coverage should be fulfilled if possible.
3 It is hereby declared to be essential for the maintenance of
4 the health of the residents of this Commonwealth that
5 subscribers to nonprofit hospital plans be assured receipt of
6 the hospitalization and related health care benefits prepaid
7 by them through payment of the rates approved under this
8 chapter and charged by a hospital plan corporation and that
9 to accomplish this essential purpose termination or
10 expiration without renewal of contracts between hospital plan
11 corporations and hospitals entered into pursuant to section
12 6121 (relating to eligible hospitals) and this section be
13 subject to prior approval by the department as provided in
14 this subsection.

15 (2) Notification period.--No contract between a hospital
16 plan corporation and any hospital providing for the rendering
17 of [hospitalization] health care services to subscribers to
18 the hospital plan shall be terminated or left to expire
19 unless the party seeking such termination or expiration gives
20 90 days advance written notice to the other party to the
21 contract and to the department of the proposed termination or
22 expiration.

23 (2.1) Penalty.--The failure to provide the written
24 notice under paragraph (2) to any party to the contract or to
25 the department shall result in the automatic renewal of the
26 contract on the existing terms and conditions in force under
27 the terms of the contract for a period of one year following
28 the proposed termination date or the date of expiration.

29 (3) [Hearing] Investigation period.--Whenever a
30 termination or expiration subject to paragraph (2) involves

1 contracts with hospitals having more than 5% of the beds in
2 the area served by a hospital plan corporation, the
3 department, in conjunction with the Department of Health,
4 shall hold [public hearings on at least 15 days notice] a
5 public hearing after providing at least 15 days notice to
6 each party to the contract for the purpose of investigating
7 the reasons for the termination or the refusal to renew and
8 the effects the termination or refusal to renew would cause
9 on the public health of the area served by the hospital plan
10 corporation. Pending completion of said investigation by the
11 department, termination or expiration of the [hospital]
12 health care service contracts shall be suspended for a period
13 not to exceed six months from the termination or expiration
14 of the period provided for in paragraph (2). All terms and
15 conditions of the contract between the hospital plan
16 corporation and the hospital or hospitals shall continue in
17 full force and effect during said investigation by the
18 department. Based on the record made during the hearings, the
19 department shall make specific findings as to the facts of
20 the dispute and shall [either] approve the termination of the
21 [contracts] contract, permit the contract to expire or
22 recommend such terms for continuation of the contract as are
23 in the public interest, based upon the facts, the right of a
24 hospital to be paid its costs for [hospitalization] health
25 care services to subscribers and the need of subscribers for
26 efficient, reliable [hospitalization] health care services at
27 a reasonable cost.

28 (4) Negotiation period.--[If the department recommends
29 terms for continuation of the contract, the hospital plan
30 corporation and the hospitals involved shall renew their

1 negotiations in order to determine whether a new agreement
2 can be reached substantially on the basis of the terms for
3 continuation recommended by the department and pending such
4 negotiations, the termination of the hospital contracts shall
5 be suspended for a further period not to exceed 90 days from
6 the date of the decision of the department. If the hospital
7 plan corporation and the hospitals are unable to consummate a
8 new contract within said further period of 90 days, they
9 shall so advise the department. The department shall in that
10 event approve termination of the contracts effective at the
11 end of a further period of 30 days and shall prescribe the
12 form and extent of notice which the hospital plan corporation
13 shall use in advising its subscribers that hospitalization in
14 the hospitals involved is not covered by a contract between
15 the hospital plan corporation and such hospitals.] If the
16 department recommended terms for continuation of the
17 contract, the parties to the contract shall renew
18 negotiations in order to determine whether a new agreement
19 can be reached substantially on the basis of the terms for
20 continuation recommended by the department. If a new
21 agreement is reached, the terms and conditions of the new
22 contract shall be retroactive to the date of the termination
23 or expiration of the contract previously in effect between
24 the parties. If, after a period of 30 days, no agreement has
25 been reached, the parties shall notify the Insurance
26 Commissioner who shall, within 15 days of receiving the
27 notification, issue an order requiring the parties to submit
28 to mediation conducted in accordance with paragraph (4.1).
29 Pending completion of the negotiation period under this
30 paragraph, termination or expiration of the health care

1 service contracts shall be suspended. All terms and
2 conditions of the contract between the hospital plan
3 corporation and the hospital or hospitals shall continue in
4 full force and effect during the negotiation period.

5 (4.1) Mediation period.--Within 15 days of receipt of
6 the notice under paragraph (4), the commissioner shall
7 appoint an independent mediator who is familiar with health
8 care delivery, provider reimbursement and health insurance to
9 conduct mediation between the parties to the contract. The
10 department shall provide staff and administrative support to
11 the mediator as necessary for the mediator to carry out the
12 mediation responsibilities under this paragraph. The mediator
13 may engage experts to assist the mediator. The costs of any
14 experts engaged by the mediator shall be paid equally by the
15 parties to the mediation. The mediator shall have the
16 authority to charge all of the costs to either of the parties
17 at the conclusion of the mediation, if the mediator
18 determines the charging of costs is appropriate. The
19 mediation shall not be subject to 65 Pa.C.S. Ch. 7 (relating
20 to open meetings) or to the act of February 14, 2008 (P.L.6,
21 No.3), known as the Right-to-Know Law. If a new agreement is
22 reached, the terms and conditions of the new contract shall
23 be retroactive to the date of the termination or expiration
24 of the contract previously in effect between the parties. If,
25 after a period of 30 days, no agreement has been reached, the
26 parties shall notify the Secretary of Health and the
27 commissioner that no agreement has been reached. Upon
28 receiving the notice, if the secretary determines that
29 termination of the contract or permitting the contract to
30 expire would substantially disrupt the delivery of health

1 care services in the area served by the hospital plan
2 corporation and that the continuation of the contract is in
3 the public interest, the secretary shall notify the
4 commissioner requesting that the department implement binding
5 arbitration under paragraph (4.2). Pending completion of the
6 mediation period under this paragraph, termination or
7 expiration of the health care service contracts shall be
8 suspended. All terms and conditions of the contract between
9 the hospital plan corporation and the hospital or hospitals
10 shall continue in full force and effect during the mediation
11 period.

12 (4.2) Fact finding period.--Within 15 days of receipt of
13 the notice from the Secretary of Health under paragraph
14 (4.1), the commissioner shall issue an order requiring the
15 parties to submit to binding arbitration conducted by the
16 department. The order shall appoint the mediator under
17 paragraph (4.1) as the finder of fact. The finder of fact
18 shall be vested with authority to direct the production of
19 any information or data not otherwise privileged or made
20 confidential by law from any party to the arbitration. The
21 finder of fact shall have the discretion to establish rules
22 of confidentiality, exchange and verification of information
23 and other procedures to ensure fairness of the process for
24 all parties and to protect appropriate trade secret or
25 confidential business information. The finding of fact shall
26 not be subject to 65 Pa.C.S. Ch. 7 or to the Right-to-Know
27 Law. A hearing shall commence within 20 days after
28 appointment of the finder of fact and may not exceed two days
29 of presentation and testimony by each party. The finder of
30 fact shall report the findings to the commissioner within

1 five days of the conclusion of the presentations and
2 testimony to the finder of fact. Each party shall bear its
3 own costs with respect to presentations and testimony to the
4 finder of fact.

5 (4.3) Arbitration period.--Within 15 days of receipt of
6 the report under paragraph (4.2), the commissioner shall
7 issue an order imposing contract terms on the hospital plan
8 corporation and the hospital or extending any contract
9 existing between the the hospital plan corporation and
10 hospital for a period not to exceed 18 months. The order
11 shall be a determination of public policy and public interest
12 and shall not be considered an adjudication under 2 Pa.C.S.
13 Ch. 5 Subch. A (relating to practice and procedure of
14 Commonwealth agencies) and Ch. 7 Subch. A (relating to
15 judicial review of Commonwealth agency action) and shall not
16 be appealable to a court of law. In reaching the decision,
17 the commissioner shall consider all of the following:

18 (i) The terms of any current health care service
19 contract between the parties.

20 (ii) Historic contract reimbursement rates for the
21 geographic area served by any party to the arbitration,
22 including weighted average rates of health care providers
23 in the area for all payers.

24 (iii) Inflation rates.

25 (iv) Average reimbursement rates for similarly
26 situated health care providers.

27 (v) Costs incurred by health care providers in the
28 provision of health care services to patients.

29 (vi) Actuarial impacts of any proposed contract or
30 reimbursement rate on insurance rates.

1 (vii) Whether a health care provider is placed at
2 risk of providing additional care without additional
3 compensation.

4 (viii) Expected patient volume under the contract.

5 (ix) Alternative health care providers'
6 accessibility to individuals.

7 (x) Any other factors as the commissioner deems
8 appropriate.

9 (5) Retroactivity.--Upon the settlement of any dispute
10 between a hospital plan corporation and any hospital pursuant
11 to [paragraphs (2) and (4)] this subsection, the terms and
12 conditions of any new health care service contract shall be
13 retroactive to the date of expiration or termination of the
14 contract previously in effect between the parties.

15 (6) Definitions.--The following words and phrases when
16 used in this subsection shall have the meanings given to them
17 in this paragraph unless the context clearly indicates
18 otherwise:

19 (i) "Health care service." The term includes:

20 (A) Hospitalization.

21 (B) Any care or treatment rendered by an
22 individual who is employed by a hospital or a
23 physician practice owned by a hospital.

24 (ii) "Hospital." An entity which is both of the
25 following:

26 (A) Is licensed as a hospital under the act of
27 July 19, 1979 (P.L.130, No.48), known as the Health
28 Care Facilities Act.

29 (B) Is either of the following:

30 (I) claiming tax exempt status under the act

1 of November 26, 1997 (P.L.508, No.55), known as
2 the Institutions of Purely Public Charity Act; or
3 (II) has received funds under the act of
4 February 9, 1999 (P.L.1, No.1), known as the
5 Capital Facilities Debt Enabling Act.

6 Section 2. The amendment of 40 Pa.C.S. § 6124(c) shall apply
7 to all terminations or expirations of contracts between a
8 hospital and a hospital plan corporation occurring on or after
9 the effective date of this section.

10 Section 3. This act shall take effect immediately.