

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1211 Session of 2019

INTRODUCED BY FRANKEL, EVERETT, DeLUCA, HILL-EVANS, D. MILLER, FREEMAN, CALTAGIRONE, DERMODY, A. DAVIS, READSHAW, KINSEY, KORTZ, MURT, HARKINS, ROZZI, DEASY, CIRESI, MARKOSEK AND NEILSON, APRIL 15, 2019

REFERRED TO COMMITTEE ON INSURANCE, APRIL 15, 2019

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," in licensing of health care
10 facilities, further providing for definitions, for licensure
11 and for issuance of license; and, in general provisions,
12 repeals and effective date, providing for confidentiality.

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

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

18 Section 802.1. Definitions.

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

22 * * *

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

6 * * *

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

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

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

18 (3) 40 Pa.C.S. Chs. 61 (relating to hospital plan
19 corporations) and 63 (relating to professional health
20 services plan corporations).

21 * * *

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

25 (1) One or more hospitals, one or more physician
26 practices or one or more health care providers offering
27 health care services.

28 (2) One or more entities operating as a health insurance
29 carrier offering health insurance, administering health
30 benefits, operating a health maintenance organization or

1 offering other health care benefits and coverage to employers
2 or individuals in this Commonwealth.

3 * * *

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

6 Section 806. Licensure.

7 * * *

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

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

16 (2) When contracting with a health insurance carrier, a
17 hospital operating as part of an integrated delivery network
18 shall be:

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

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

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

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

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

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

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

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

30 (6) All costs associated with the arbitration shall be

1 split equally between the parties.

2 (7) The arbitrator shall conduct the arbitration
3 pursuant to the American Arbitration Association's healthcare
4 payor provider rules.

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

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

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

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

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

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

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

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

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

29 (11) Copies of all contracts between hospitals operating
30 as part of an integrated delivery network and all health

insurance carriers shall be provided to the department and the Insurance Department.

Section 3. Section 808(a) of the act is amended and the section is amended by adding subsections to read:

Section 808. Issuance of license.

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

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

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

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

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

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

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

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

(i) has contracts with all willing health insurance carriers;

(ii) does not place restrictive covenants in its

employment contracts that restrain a health care practitioner from engaging in the health care practitioner's lawful profession; and

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

* * *

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

(e) Survey.--The department or a surveyor of the department may conduct a survey under this section of a hospital operating as part of an integrated delivery network as often as the secretary, in the sole discretion of the secretary, deems appropriate.

(f) Survey expenses.--When conducting a survey under this section, the department may retain attorneys, independent actuaries, independent certified public accountants or other professionals and specialists as surveyors. All expenses incurred in and about the survey of a hospital, including

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

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

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

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

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

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