
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 187 Session of
2007

INTRODUCED BY GINGRICH, EACHUS, BAKER, BEYER, BIANCUCCI, BOYD,
CALTAGIRONE, CAPPELLI, COX, CREIGHTON, CURRY, DALLY,
FABRIZIO, FRANKEL, FREEMAN, GEORGE, GIBBONS, GILLESPIE,
GOODMAN, GRUCELA, HARHART, HARPER, HENNESSEY, HESS, HORNAMAN,
JAMES, M. KELLER, KILLION, KOTIK, KULA, MANDERINO, MARKOSEK,
McILHATTAN, MELIO, MILLARD, MUNDY, MUSTIO, O'NEILL, PICKETT,
RAPP, REICHLEY, RUBLEY, SANTONI, SCAVELLO, SIPTROTH, SOLOBAY,
SONNEY, STERN, SWANGER, WALKO, WATSON, YOUNGBLOOD AND
YUDICHAK, FEBRUARY 1, 2007

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,
FEBRUARY 1, 2007

AN ACT

1 Establishing the Long-Term Care Quality Improvement Council; and
2 providing for a system for data collection, for benchmarking
3 and dissemination of long-term care provider quality
4 performance reports, for annual reports to the General
5 Assembly and for publication of reports for public use.

6 TABLE OF CONTENTS

7 Chapter 1. General Provisions
8 Section 101. Short title.
9 Section 102. Legislative findings.
10 Section 103. Definitions.
11 Chapter 3. Long-Term Care Quality Improvement Council
12 Section 301. Establishment.
13 Section 302. Powers and duties.
14 Section 303. Commonwealth agency responsibilities.
15 Chapter 5. Miscellaneous Provisions

1 Section 501. Administration.

2 Section 502. Repeals.

3 Section 503. Effective date.

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

6 CHAPTER 1

7 GENERAL PROVISIONS

8 Section 101. Short title.

9 This act shall be known and may be cited as the Long-Term
10 Care Quality Improvement Act.

11 Section 102. Legislative findings.

12 The General Assembly finds and declares as follows:

13 (1) This Commonwealth has the third oldest population
14 demographically of any state, with more than 1.9 million
15 residents who are at least 65 years of age and will
16 increasingly demand more intensive long-term care services.
17 Currently, approximately 77,500 older Pennsylvanians reside
18 in nursing facilities; approximately 53,000 reside in
19 personal care homes or assisted living residences; at least
20 20,000 Pennsylvanians reside in independent housing
21 environments; and thousands more receive long-term care and
22 services in their homes and in community settings.

23 (2) For the foreseeable future, the needs of
24 Pennsylvanians for long-term care will continue to increase
25 substantially and the peak post-World War II baby boom
26 population will reach retirement age beginning in 2010.

27 (3) As this Commonwealth's population continues to age,
28 the number of impairments of daily living activities among
29 citizens requiring long-term care will also continue to
30 increase, thereby posing greater challenges to all providers

1 of long-term care.

2 (4) The Commonwealth should respond to the demographic
3 and health care challenges it faces by becoming the nation's
4 leader in providing and assuring high-quality long-term care
5 services.

6 (5) While the enforcement of licensing requirements
7 through inspections and a system of reasonable and
8 proportionate sanctions is necessary to establish and
9 maintain minimum standards for long-term care in order to
10 promote excellence in long-term care, the focus of the
11 Commonwealth's efforts should be expanded to prioritize the
12 development of programs to continuously promote systemic
13 improvement in the quality of long-term care.

14 (6) The establishment of a comprehensive consumer
15 information system that makes readily available comparative
16 information regarding long-term care providers, services
17 provided and a quantifiable and reliable performance
18 measurement system that links standards and modalities for
19 the provision of care to actual outcomes will allow consumers
20 and their family members to make more informed choices and
21 promote continuous systemic improvements in the quality of
22 long-term care and services.

23 (7) An effective performance measurement system should
24 be developed in cooperation with consumers, family members,
25 providers, regulators and payers to provide specific
26 benchmarks to compare various care settings and include not
27 only clinical outcomes but also managerial and operational
28 practices.

29 (8) The Department of Health's clinical best-management
30 practices research project has successfully facilitated a

1 comparison between good and average nursing facilities and
2 promoted improvements and innovations with respect to the
3 quality of services provided by nursing facilities.

4 (9) The project should be substantially expanded to
5 include all settings and modalities in which long-term care
6 is provided and continuously improved. Additional resources
7 should be devoted to research needed to validate the
8 clinical, operational and managerial practices that are truly
9 superior and meaningfully contribute to a higher quality of
10 care and a better quality of life for older Pennsylvanians.

11 Section 103. Definitions.

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

15 "Benchmarks." Combinations of measures relating to long-term
16 care providers, including evaluations of services provided,
17 compliance history, best-management practices and outcome-based
18 performance measures, developed as voluntary consensus standards
19 and verified based upon research and evaluation, that are
20 associated with providing various levels of quality of care
21 suitable for the management of particular conditions, diseases
22 or disabilities for which long-term care is necessary and
23 appropriate.

24 "Best practices." Clinical, operational and managerial-
25 related practices that promote the provision of high-quality
26 long-term care.

27 "Commonwealth agency." An agency of the Commonwealth
28 responsible for the licensing, registration, certification,
29 inspection and investigation of long-term care providers,
30 including, but not limited to, the Department of Aging, the

1 Department of Health, the Insurance Department and the
2 Department of Public Welfare.

3 "Intra-governmental council." The Intra-Governmental Council
4 on Long-Term Care established pursuant to section 212 of the act
5 of June 13, 1967 (P.L.31, No.21), known as the Public Welfare
6 Code.

7 "Long-term care." Assistance, services or devices provided
8 over an extended period of time and designed to meet medical,
9 personal and social needs associated with aging, chronic disease
10 or disability, acute illness or injury or behavioral health
11 problems that enable a person to live as independently as
12 possible, which services are provided by a nursing facility,
13 assisted living facility, domiciliary care home, personal care
14 home, continuing care retirement community, home health agency,
15 adult day-care provider or other home-based and community-based
16 provider.

17 "Long-term care provider." An entity licensed, certified or
18 approved by a Commonwealth agency to provide long-term care.

19 "Performance measures." A system composed of processes
20 and/or outcome measures of performance, processes for
21 collecting, analyzing and disseminating these measures from
22 multiple sources or organizations and an automated database,
23 which together can be used to facilitate performance improvement
24 of long-term care providers under this act.

25 "Quality improvement council." The Long-Term Care Quality
26 Improvement Council established in section 301.

27 "Voluntary consensus standards." Nonbinding standards for
28 performance developed through a process comparable to procedures
29 used to develop standards, pursuant to section 2(b)(10) of the
30 National Institute of Standards and Technology Act (31

1 Stat.1449, 15 U.S.C. § 272(b)(10)), involving consultation with
2 consumers, family members, regulators and long-term care
3 providers, validated on clinical research and subject to regular
4 and periodic review and modification as necessary to
5 continuously seek improvements in the quality of long-term care.

6 CHAPTER 3

7 LONG-TERM CARE QUALITY IMPROVEMENT COUNCIL

8 Section 301. Establishment.

9 (a) General rule.--The Long-Term Care Quality Improvement
10 Council is established as an independent council. The quality
11 improvement council shall be affiliated with and provided with
12 administrative support and legal services by the intra-
13 governmental council and may take action jointly in cooperation
14 with the intra-governmental council.

15 (b) Composition.--The quality improvement council shall
16 consist of the following members:

17 (1) The Secretary of Aging.

18 (2) The Secretary of Health.

19 (3) The Secretary of Public Welfare.

20 (4) The Secretary of Labor and Industry.

21 (5) The Insurance Commissioner.

22 (6) The Physician General.

23 (7) Eight residents of this Commonwealth who represent
24 long-term care providers, two of whom shall be appointed by
25 the President pro tempore of the Senate, two of whom shall be
26 appointed by the Minority Leader of the Senate, two of whom
27 shall be appointed by the Speaker of the House of
28 Representatives and two of whom shall be appointed by the
29 Minority Leader of the House of Representatives. Those
30 appointed by the legislative officers shall include a

1 representative of the proprietary nursing facilities,
2 nonprofit nursing facilities, county-owned nursing
3 facilities, hospital-based nursing facilities, personal care
4 homes, assisted living facilities, continuing care retirement
5 communities and home health agencies.

6 (8) Three members who are affiliated with Commonwealth
7 university-based research organizations with a purpose of
8 determining the components or factors that serve
9 appropriately as the indicators of quality care in long-term
10 care, one of whom shall be appointed by the Governor, one of
11 whom shall be appointed by the President pro tempore of the
12 Senate and one of whom shall be appointed by the Speaker of
13 the House of Representatives.

14 (9) Two physicians who practice in long-term care
15 settings, one of whom shall practice in a facility-based
16 setting and the other of whom shall practice in a community
17 setting and both of whom shall be appointed by the Governor
18 from a list of at least four qualified individuals
19 recommended by the Pennsylvania Medical Directors
20 Association.

21 (10) Two licensed nurses with a minimum of five years'
22 experience practicing in a long-term care provider setting
23 and currently employed by a long-term care provider, one of
24 whom is employed in a facility-based setting and the other of
25 whom is employed in a community setting, both of whom shall
26 be appointed by the Governor.

27 (11) Two residents of this Commonwealth who either:

28 (i) receive or formerly received long-term care, one
29 of whom resides in a facility-based setting and the other
30 of whom resides in a community setting; or

1 (ii) are family members of past or current
2 recipients of long-term care in such setting and who are
3 not health care workers nor representatives of a consumer
4 advocacy group, whether paid or unpaid;
5 both of whom shall be appointed by the Governor.

6 (c) Chairperson and vice chairperson.--The members of the
7 quality improvement council shall annually elect, by a majority
8 vote of the members, a chairperson and vice chairperson from
9 among the members who do not serve in an ex officio capacity.

10 (d) Bylaws.--The quality improvement council shall adopt
11 bylaws, not inconsistent with this act, and may appoint such
12 committees or elect such officers subordinate to those provided
13 for in subsection (c) as it deems advisable.

14 (e) Professional advisory group.--The quality improvement
15 council shall appoint a professional advisory group that shall,
16 on an ad hoc basis, respond to issues presented to it by the
17 quality improvement council members or committees and shall make
18 recommendations to the quality improvement council.

19 (f) Compensation and expenses.--The members of the quality
20 improvement council and the professional advisory group shall
21 not receive a salary or per diem allowance for serving in that
22 capacity but shall be reimbursed for actual and necessary
23 expenses incurred in the performance of their duties, including
24 reimbursement of travel and living expenses while engaged in
25 business of the quality improvement council.

26 (g) Terms.--The terms of the Secretary of Aging, the
27 Secretary of Health, the Secretary of Public Welfare, the
28 Secretary of Labor and Industry, the Insurance Commissioner and
29 the Physician General shall be concurrent with their holding of
30 public office, and the other members shall each serve for a term

1 of three years and continue to serve until their successor is
2 appointed.

3 (h) Vacancies.--Vacancies on the quality improvement council
4 shall be filled in the same manner in which they were originally
5 designated under subsection (b) within 60 days of the vacancy,
6 except that appointments to fill vacancies pursuant to
7 subsection (b)(7) shall be made from among the same class or
8 category of long-term care providers as the immediate successor
9 of the appointee, except as otherwise agreed upon by the
10 appointing authorities in the event that two or more vacancies
11 are filled at the same time.

12 (i) Quorum.--Twelve members, a majority of which shall be
13 made up of representatives appointed under subsection (b) (7),
14 shall constitute a quorum for the transaction of any business,
15 and the act by the majority of the members present at any
16 meeting in which there is a quorum shall be deemed to be the act
17 of the quality improvement council. Notwithstanding any other
18 provision of law, the transaction of any business by the quality
19 improvement council at a meeting shall be made either by the
20 members present in person or through use of amplified telephonic
21 equipment if authorized by the bylaws of the council.

22 (j) Meetings.--The quality improvement council shall meet at
23 least quarterly and at the call of the chairperson or as may be
24 provided in the bylaws pursuant to subsection (d).

25 Section 302. Powers and duties.

26 (a) General powers.--The quality improvement council shall
27 exercise all powers necessary and appropriate to carry out its
28 duties, including the following:

29 (1) To employ an executive director and other staff as
30 necessary to implement this act and to fix their compensation

1 and duties. Employees of the quality improvement council
2 shall be deemed employees of the Commonwealth for all
3 purposes.

4 (2) To apply for, solicit, receive, establish priorities
5 for, allocate, disburse, contract for and administer funds,
6 including appropriations, grants, gifts and bequests, that
7 are made available to the quality improvement council from
8 any source consistent with the purposes of this act.

9 (3) To make and execute contracts and other instruments
10 and engage professional consultants as necessary to implement
11 this act pursuant to the procedures set forth in 62 Pa.C.S.
12 Pt. I (relating to Commonwealth Procurement Code).

13 (4) To conduct examinations, investigations and audits
14 and to hear testimony and take proof under oath or
15 affirmation at public or private hearings on any matter
16 necessary to its duties.

17 (b) Rules and regulations.--The quality improvement council
18 may, in the manner provided by law, promulgate rules and
19 regulations necessary to carry out its duties under this act,
20 including rules and regulations relating to:

21 (1) The establishment of a methodology to collect,
22 analyze and disseminate data reflecting provider quality and
23 service effectiveness and to continuously study quality of
24 care.

25 (2) The submission of health care information by long-
26 term care providers to the quality improvement council as
27 necessary to evaluate provider quality and service
28 effectiveness and to continuously study the quality of care.
29 Any documents, materials, records, information or other raw
30 data submitted by a long-term care provider shall be deemed

1 confidential by the quality improvement council and shall not
2 be discoverable or admissible as evidence in any civil or
3 administrative action or proceeding in the same manner as
4 provided by section 311 of the act of March 20, 2002
5 (P.L.154, No.13), known as the Medical Care Availability and
6 Reduction of Error (Mcare) Act, and shall not be made
7 available to any person or agency, other than the quality
8 improvement council, except reports regarding the overall
9 quality of long-term care with the expressed written consent
10 of the providers.

11 (3) The quality improvement council shall have the
12 authority to independently audit information submitted by
13 data sources as needed to corroborate the accuracy of the
14 data, provided that audits shall be coordinated, to the
15 extent practical, with other audits performed by or on behalf
16 of the Commonwealth.

17 (c) Development of voluntary consensus standards.--In
18 accordance with the provisions set forth in 62 Pa.C.S. Pt. I,
19 the quality improvement council shall contract with an
20 independent, qualified, experienced and nationally recognized
21 entity qualified to develop, implement and continuously update
22 and revise voluntary consensus standards for long-term care
23 providers to do all of the following:

24 (1) Provide comprehensive comparative information
25 regarding the characteristics of long-term care providers and
26 services provided by them, including, but not limited to,
27 information relating to location, capacity, staffing, methods
28 of payment accepted and the availability of financial
29 assistance.

30 (2) Provide comprehensive comparative information

1 regarding the quality of care services provided by long-term
2 care providers.

3 (3) Identify, evaluate and promote the adoption of best
4 practices for long-term care providers and provide
5 comprehensive comparative information regarding the
6 utilization of best practices by long-term care providers.

7 (4) Identify and validate performance measures for the
8 evaluation of the quality of long-term care and provide
9 comprehensive comparative information regarding the quality
10 of long-term care offered by long-term care providers based
11 upon such performance measures.

12 (5) Provide information for long-term care providers,
13 which benchmarks combine information relating to the
14 characteristics, services, compliance history, adoption of
15 best practices and quality of care as determined by
16 performance measures, for use in a rating system that will
17 assist consumers and family members in making informed
18 choices for obtaining long-term care.

19 (6) Provide a comprehensive comparative information
20 system that is readily available to consumers, their family
21 members and the general public without cost both through
22 publications and Internet access regarding long-term care
23 providers and that assists in the selection and utilization
24 of long-term care and services.

25 (7) Provide recommendations to the quality improvement
26 council for long-term care policies, practices and procedures
27 that may be instituted for the purposes of enhancing and
28 improving the quality of long-term care provided.

29 (8) Establish annual quality improvement goals for long-
30 term care facilities in this Commonwealth.

1 (d) Annual report to the General Assembly.--The quality
2 improvement council shall issue a report no later than December
3 31, 2007, and annually thereafter, to the General Assembly and
4 the public regarding its activities during the preceding year.
5 The report shall be made available without cost both through
6 publication and Internet access and shall include:

7 (1) A schedule of the year's meetings.

8 (2) A list of contracts entered into by the quality
9 improvement council and amounts awarded to each contractor.

10 (3) Financial information regarding funding received and
11 expenditures undertaken by the quality improvement council
12 and amounts awarded to each contractor.

13 (4) A summary of data collected regarding the
14 characteristics and services provided by long-term care
15 providers, adoption of best practices and achievement of
16 quality based on performance measures.

17 (5) The status of development, implementation, use and
18 improvement in the comprehensive comparative consumer
19 information system as provided by subsection (c)(6).

20 (6) Recommendations for long-term care policies,
21 practices and procedures that may be voluntarily adopted by
22 long-term care providers to enhance and improve the quality
23 of long-term care.

24 (7) Recommendations for statutory or regulatory changes
25 to improve long-term care provider quality performance.

26 Section 303. Commonwealth agency responsibilities.

27 (a) General rule.--Each Commonwealth agency responsible for
28 the regulation of long-term care providers or the development of
29 policies regarding long-term care shall:

30 (1) Receive and review reports of trends identified in

1 the analysis of performance measures under section 302.

2 (2) In conjunction with the quality improvement council,
3 analyze and evaluate existing regulations and approve
4 recommendations issued by the quality improvement council
5 under section 302(d)(7).

6 (b) Implementation of recommendations.--Recommendations made
7 by the quality improvement council to providers under section
8 302(d)(6) regarding practices and procedures for the improvement
9 of the quality of care may not be considered for the purposes of
10 long-term care provider licensure, registration or certification
11 by a Commonwealth agency and may not be considered mandatory
12 standards of care for statutory or regulatory purposes or in
13 civil or criminal litigation.

14 CHAPTER 5

15 MISCELLANEOUS PROVISIONS

16 Section 501. Administration.

17 (a) Access to council data.--Except as otherwise provided by
18 this act, information and data received by the quality
19 improvement council or its professional consultants may be
20 disseminated and published and shall be made available, used and
21 protected from unauthorized disclosure and shall not be subject
22 to disclosure pursuant to the act of June 21, 1957 (P.L.390,
23 No.212), referred to as the Right-to-Know Law.

24 (b) Enforcement.--The quality improvement council shall have
25 standing to bring an action in law or in equity through legal
26 counsel as provided by the Governor's Office of General Counsel
27 in a court of competent jurisdiction to enforce compliance with
28 any requirement of this act, including regulations adopted
29 pursuant to this act.

30 (c) Antitrust.--A person or entity that submits or receives

1 data or information under this act or receives data or
2 information from the quality improvement council or its
3 professional consultants in accordance with this act are
4 declared to be acting pursuant to Commonwealth requirements
5 embodied in this act and shall be exempt from antitrust claims
6 or actions grounded upon the submission or receipt of such data
7 or information.

8 Section 502. Repeals.

9 All acts and parts of acts are repealed insofar as they are
10 inconsistent with this act.

11 Section 503. Effective date.

12 This act shall take effect in 180 days.