
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 310 Session of
2009

INTRODUCED BY GINGRICH, BEYER, CARROLL, FRANKEL, GEIST, GROVE,
HENNESSEY, HESS, HORNAMAN, KAUFFMAN, KORTZ, MILLER, MOUL,
PHILLIPS, PICKETT, RAPP, ROSS, SIPTROTH, SWANGER, VULAKOVICH
AND WATSON, FEBRUARY 9, 2009

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,
FEBRUARY 9, 2009

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.

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1 The General Assembly of the Commonwealth of Pennsylvania
2 hereby enacts as follows:

3 CHAPTER 1
4 GENERAL PROVISIONS

5 Section 101. Short title.

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

8 Section 102. Legislative findings.

9 The General Assembly finds and declares as follows:

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

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

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

29 (4) The Commonwealth should respond to the demographic
30 and health care challenges it faces by becoming the nation's

1 leader in providing and assuring high-quality long-term care
2 services.

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

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

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

26 (8) The Department of Health's clinical best-management
27 practices research project has successfully facilitated a
28 comparison between good and average nursing facilities and
29 promoted improvements and innovations with respect to the
30 quality of services provided by nursing facilities.

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

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

21 "Best practices." Clinical, operational and managerial-
22 related practices that promote the provision of high-quality
23 long-term care.

24 "Commonwealth agency." An agency of the Commonwealth
25 responsible for the licensing, registration, certification,
26 inspection and investigation of long-term care providers,
27 including, but not limited to, the Department of Aging, the
28 Department of Health, the Insurance Department and the
29 Department of Public Welfare.

30 "Intra-governmental council." The Intra-Governmental Council

1 on Long-Term Care established under section 212 of the act of
2 June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

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

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

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

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

23 "Voluntary consensus standards." Nonbinding standards for
24 performance developed through a process comparable to procedures
25 used to develop standards, under section 2(b)(10) of the
26 National Institute of Standards and Technology Act (31 Stat.
27 1449, 15 U.S.C. § 272(b)(10)), involving consultation with
28 consumers, family members, regulators and long-term care
29 providers, validated on clinical research and subject to regular
30 and periodic review and modification as necessary to

1 continuously seek improvements in the quality of long-term care.

2 CHAPTER 3

3 LONG-TERM CARE QUALITY IMPROVEMENT COUNCIL

4 Section 301. Establishment.

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

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

13 (1) The Secretary of Aging.

14 (2) The Secretary of Health.

15 (3) The Secretary of Public Welfare.

16 (4) The Secretary of Labor and Industry.

17 (5) The Insurance Commissioner.

18 (6) The Physician General.

19 (7) Eight residents of this Commonwealth who represent
20 long-term care providers, two of whom shall be appointed by
21 the President pro tempore of the Senate, two of whom shall be
22 appointed by the Minority Leader of the Senate, two of whom
23 shall be appointed by the Speaker of the House of
24 Representatives and two of whom shall be appointed by the
25 Minority Leader of the House of Representatives. Those
26 appointed by the legislative officers shall include a
27 representative of the proprietary nursing facilities,
28 nonprofit nursing facilities, county-owned nursing
29 facilities, hospital-based nursing facilities, personal care
30 homes, assisted living facilities, continuing care retirement

1 communities and home health agencies.

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

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

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

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

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

27 (ii) are family members of past or current
28 recipients of long-term care in such setting and who are
29 not health care workers nor representatives of a consumer
30 advocacy group, whether paid or unpaid;

1 both of whom shall be appointed by the Governor.

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

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

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

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

22 (g) Terms.--The terms of the Secretary of Aging, the
23 Secretary of Health, the Secretary of Public Welfare, the
24 Secretary of Labor and Industry, the Insurance Commissioner and
25 the Physician General shall be concurrent with their holding of
26 public office, and the other members shall each serve for a term
27 of three years and continue to serve until their successor is
28 appointed.

29 (h) Vacancies.--Vacancies on the quality improvement council
30 shall be filled in the same manner in which they were originally

1 designated under subsection (b) within 60 days of the vacancy,
2 except that appointments to fill vacancies under subsection (b)
3 (7) shall be made from among the same class or category of long-
4 term care providers as the immediate successor of the appointee,
5 except as otherwise agreed upon by the appointing authorities in
6 the event that two or more vacancies are filled at the same
7 time.

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

18 (j) Meetings.--The quality improvement council shall meet at
19 least quarterly and at the call of the chairperson or as may be
20 provided in the bylaws under subsection (d).

21 Section 302. Powers and duties.

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

25 (1) To employ an executive director and other staff as
26 necessary to implement this act and to fix their compensation
27 and duties. Employees of the quality improvement council
28 shall be deemed employees of the Commonwealth for all
29 purposes.

30 (2) To apply for, solicit, receive, establish priorities

1 for, allocate, disburse, contract for and administer funds,
2 including appropriations, grants, gifts and bequests, that
3 are made available to the quality improvement council from
4 any source consistent with the purposes of this act.

5 (3) To make and execute contracts and other instruments
6 and engage professional consultants as necessary to implement
7 this act under the procedures set forth in 62 Pa.C.S. Pt. I
8 (relating to Commonwealth Procurement Code).

9 (4) To conduct examinations, investigations and audits
10 and to hear testimony and take proof under oath or
11 affirmation at public or private hearings on any matter
12 necessary to its duties.

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

17 (1) The establishment of a methodology to collect,
18 analyze and disseminate data reflecting provider quality and
19 service effectiveness and to continuously study quality of
20 care.

21 (2) The submission of health care information by long-
22 term care providers to the quality improvement council as
23 necessary to evaluate provider quality and service
24 effectiveness and to continuously study the quality of care.
25 Any documents, materials, records, information or other raw
26 data submitted by a long-term care provider shall be deemed
27 confidential by the quality improvement council and shall not
28 be discoverable or admissible as evidence in any civil or
29 administrative action or proceeding in the same manner as
30 provided by section 311 of the act of March 20, 2002 (P.L.

1 154, No.13), known as the Medical Care Availability and
2 Reduction of Error (Mcare) Act, and shall not be made
3 available to any person or agency, other than the quality
4 improvement council, except reports regarding the overall
5 quality of long-term care with the expressed written consent
6 of the providers.

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

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

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

26 (2) Provide comprehensive comparative information
27 regarding the quality of care services provided by long-term
28 care providers.

29 (3) Identify, evaluate and promote the adoption of best
30 practices for long-term care providers and provide

1 comprehensive comparative information regarding the
2 utilization of best practices by long-term care providers.

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

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

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

21 (7) Provide recommendations to the quality improvement
22 council for long-term care policies, practices and procedures
23 that may be instituted for the purposes of enhancing and
24 improving the quality of long-term care provided.

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

27 (d) Annual report to the General Assembly.--The quality
28 improvement council shall issue a report no later than December
29 31, 2009, and annually thereafter, to the General Assembly and
30 the public regarding its activities during the preceding year.

1 The report shall be made available without cost both through
2 publication and Internet access and shall include:

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

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

6 (3) Financial information regarding funding received and
7 expenditures undertaken by the quality improvement council
8 and amounts awarded to each contractor.

9 (4) A summary of data collected regarding the
10 characteristics and services provided by long-term care
11 providers, adoption of best practices and achievement of
12 quality based on performance measures.

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

16 (6) Recommendations for long-term care policies,
17 practices and procedures that may be voluntarily adopted by
18 long-term care providers to enhance and improve the quality
19 of long-term care.

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

22 Section 303. Commonwealth agency responsibilities.

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

26 (1) Receive and review reports of trends identified in
27 the analysis of performance measures under section 302.

28 (2) In conjunction with the quality improvement council,
29 analyze and evaluate existing regulations and approve
30 recommendations issued by the quality improvement council

1 under section 302(d)(7).

2 (b) Implementation of recommendations.--Recommendations made
3 by the quality improvement council to providers under section
4 302(d)(6) regarding practices and procedures for the improvement
5 of the quality of care may not be considered for the purposes of
6 long-term care provider licensure, registration or certification
7 by a Commonwealth agency and may not be considered mandatory
8 standards of care for statutory or regulatory purposes or in
9 civil or criminal litigation.

10 CHAPTER 5

11 MISCELLANEOUS PROVISIONS

12 Section 501. Administration.

13 (a) Access to council data.--Except as otherwise provided by
14 this act, information and data received by the quality
15 improvement council or its professional consultants may be
16 disseminated and published and shall be made available, used and
17 protected from unauthorized disclosure and shall not be subject
18 to disclosure under the act of June February 14, 2008 (P.L.6,
19 No.3), known as the Right-to-Know Law.

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

26 (c) Antitrust.--A person or entity that submits or receives
27 data or information under this act or receives data or
28 information from the quality improvement council or its
29 professional consultants in accordance with this act are
30 declared to be acting under Commonwealth requirements embodied

1 in this act and shall be exempt from antitrust claims or actions
2 grounded upon the submission or receipt of such data or
3 information.

4 Section 502. Repeals.

5 All acts and parts of acts are repealed insofar as they are
6 inconsistent with this act.

7 Section 503. Effective date.

8 This act shall take effect in 180 days.