

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 89** Session of
2009

INTRODUCED BY VANCE, FONTANA, ERICKSON, SCARNATI, PILEGGI,
ALLOWAY, BAKER, BOSCOLA, BROWNE, CORMAN, COSTA, EARLL,
FARNESE, FERLO, GORDNER, GREENLEAF, HUGHES, KASUNIC, LEACH,
LOGAN, MELLOW, O'PAKE, ORIE, PICCOLA, PIPPY, RAFFERTY,
ROBBINS, STACK, STOUT, TARTAGLIONE, WASHINGTON, WAUGH AND
YAW, JANUARY 29, 2009

REFERRED TO PUBLIC HEALTH AND WELFARE, JANUARY 29, 2009

AN ACT

1 Amending the act of July 8, 1986 (P.L.408, No.89), entitled, as
2 reenacted, "An act providing for the creation of the Health
3 Care Cost Containment Council, for its powers and duties, for
4 health care cost containment through the collection and
5 dissemination of data, for public accountability of health
6 care costs and for health care for the indigent; and making
7 an appropriation," defining "committee"; further providing
8 for the Health Care Cost Containment Council and its powers
9 and duties, for data submission and collection and for access
10 to council data; and providing for the establishment of a
11 Health Care Cost Containment Council Act Review Committee and
12 for sunset of act.

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

15 Section 1. Section 3 of the act of July 8, 1986 (P.L.408,
16 No.89), known as the Health Care Cost Containment Act, reenacted
17 and amended July 17, 2003 (P.L.31, No.14), is amended by adding
18 a definition to read:

19 Section 3. Definitions.

20 The following words and phrases when used in this act shall
21 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 * * *

3 "Committee." The Health Care Cost Containment Council Act
4 Review Committee.

5 * * *

6 Section 2. Sections 4(f), 5(c) and (d), 6(a) and (d) and
7 10(b) (5) of the act are amended to read:

8 Section 4. Health Care Cost Containment Council.

9 * * *

10 (f) Bylaws.--The council shall adopt bylaws, not
11 inconsistent with this act, and may appoint such committees or
12 elect such officers subordinate to those provided for in
13 subsection (c) as it deems advisable. The council shall provide
14 for the approval and participation of additional delegates
15 appointed under subsection (b) (7) and (8) so that each
16 organization represented by delegates under those paragraphs
17 shall not have more than one vote on any committee to which they
18 are appointed. The council shall also appoint a technical
19 advisory group which shall, on an ad hoc basis, respond to
20 issues presented to it by the council or committees of the
21 council and shall make recommendations to the council. The
22 technical advisory group shall include physicians, researchers,
23 biostatisticians, one representative of the Hospital and
24 Healthsystem Association of Pennsylvania and one representative
25 of the Pennsylvania Medical Society. The Hospital and
26 Healthsystem Association of Pennsylvania and the Pennsylvania
27 Medical Society representatives shall not be subject to
28 executive committee approval. In appointing other physicians,
29 researchers and biostatisticians to the technical advisory
30 group, the council shall consult with and take nominations from

1 the representatives of the Hospital Association of Pennsylvania,
2 the Pennsylvania Medical Society, the Pennsylvania Osteopathic
3 Medical Society or other like organizations. At its discretion
4 and in accordance with this section, nominations shall be
5 approved by the executive committee of the council. If the
6 subject matter of any project exceeds the expertise of the
7 technical advisory group, physicians in appropriate specialties
8 who possess current knowledge of the issue under study may be
9 consulted. The technical advisory group shall also review the
10 availability and reliability of severity of illness measurements
11 as they relate to small hospitals and psychiatric,
12 rehabilitation and children's hospitals and shall make
13 recommendations to the council based upon this review. Meetings
14 of the technical advisory group shall be open to the general
15 public.

16 * * *

17 Section 5. Powers and duties of the council.

18 * * *

19 (c) Audit powers.--The council shall have the right to
20 independently audit all information required to be submitted by
21 data sources as needed to corroborate the accuracy of the
22 submitted data, pursuant to the following:

23 (1) Audits of information submitted by providers or
24 health care insurers shall be performed on a sample and
25 issue-specific basis, as needed by the council, and shall be
26 coordinated, to the extent practicable, with audits performed
27 by the Commonwealth. All health care insurers and providers
28 are hereby required to make those books, records of accounts
29 and any other data needed by the auditors available to the
30 council at a convenient location within 30 days of a written

1 notification by the council.

2 (2) Audits of information submitted by purchasers shall
3 be performed on a sample basis, unless there exists
4 reasonable cause to audit specific purchasers, but in no case
5 shall the council have the power to audit financial
6 statements of purchasers.

7 (3) All audits performed by the council shall be
8 performed at the expense of the council.

9 (4) The results of audits of providers or health care
10 insurers shall be provided to the audited providers and
11 health care insurers on a timely basis, not to exceed 30 days
12 beyond presentation of audit findings to the council.

13 (d) General duties and functions.--The council is hereby
14 authorized to and shall perform the following duties and
15 functions:

16 (1) Develop a computerized system for the collection,
17 analysis and dissemination of data. The council may contract
18 with a vendor who will provide such data processing services.
19 The council shall assure that the system will be capable of
20 processing all data required to be collected under this act.
21 Any vendor selected by the council shall be selected in
22 accordance with the provisions of section 16, and said vendor
23 shall relinquish any and all proprietary rights or claims to
24 the data base created as a result of implementation of the
25 data processing system.

26 (2) Establish a Pennsylvania Uniform Claims and Billing
27 Form for all data sources and all providers which shall be
28 utilized and maintained by all data sources and all providers
29 for all services covered under this act.

30 (3) Collect and disseminate data, as specified in

1 section 6, and other information from data sources to which
2 the council is entitled, prepared according to formats, time
3 frames and confidentiality provisions as specified in
4 sections 6 and 10, and by the council.

5 (4) Adopt and implement a methodology to collect and
6 disseminate data reflecting provider quality and provider
7 service effectiveness pursuant to section 6.

8 (5) Subject to the restrictions on access to raw data
9 set forth in section 10, issue special reports and make
10 available raw data as defined in section 3 to any purchaser
11 requesting it. Sale by any recipient or exchange or
12 publication by a recipient, other than a purchaser, of raw
13 council data to other parties without the express written
14 consent of, and under terms approved by, the council shall be
15 unauthorized use of data pursuant to section 10(c).

16 (6) On an annual basis, publish in the Pennsylvania
17 Bulletin a list of all the raw data reports it has prepared
18 under section 10(f) and a description of the data obtained
19 through each computer-to-computer access it has provided
20 under section 10(f) and of the names of the parties to whom
21 the council provided the reports or the computer-to-computer
22 access during the previous month.

23 (7) Promote competition in the health care and health
24 insurance markets.

25 (8) Assure that the use of council data does not raise
26 access barriers to care.

27 (10) Make annual reports to the General Assembly on the
28 rate of increase in the cost of health care in the
29 Commonwealth and the effectiveness of the council in carrying
30 out the legislative intent of this act. In addition, the

1 council may make recommendations on the need for further
2 health care cost containment legislation. The council shall
3 also make annual reports to the General Assembly on the
4 quality and effectiveness of health care and access to health
5 care for all citizens of the Commonwealth.

6 (12) Conduct studies and publish reports thereon
7 analyzing the effects that noninpatient, alternative health
8 care delivery systems have on health care costs. These
9 systems shall include, but not be limited to: HMO's; PPO's;
10 primary health care facilities; home health care; attendant
11 care; ambulatory service facilities; freestanding emergency
12 centers; birthing centers; and hospice care. These reports
13 shall be submitted to the General Assembly and shall be made
14 available to the public.

15 (13) Conduct studies and make reports concerning the
16 utilization of experimental and nonexperimental transplant
17 surgery and other highly technical and experimental
18 procedures, including costs and mortality rates.

19 (14) In order to ensure that the council adopts and
20 maintains both scientifically credible and cost-effective
21 methodology to collect and disseminate data reflecting
22 provider quality and service effectiveness, the council
23 shall, within one year of the effective date of this
24 paragraph, utilizing current Commonwealth agency guidelines
25 and procedures, issue a request for information from any
26 vendor that wishes to provide data collection or risk
27 adjustment methodology to the council to help meet the
28 requirements of this subsection and section 6. The council
29 shall establish an independent Request for Information Review
30 Committee to review and rank all responses and to make a

1 final recommendation to the council. The Request for
2 Information Review Committee shall consist of the following
3 members appointed by the Governor:

4 (i) One representative of the Hospital and
5 Healthsystem Association of Pennsylvania.

6 (ii) One representative of the Pennsylvania Medical
7 Society.

8 (iii) One representative of insurance.

9 (iv) One representative of labor.

10 (v) One representative of business.

11 (vi) Two representatives of the general public.

12 (15) The council shall execute a request for proposals
13 with third-party vendors for the purpose of demonstrating a
14 methodology for the collection, analysis and reporting of
15 hospital-specific complication rates. The results of this
16 demonstration shall be provided to the chairman and minority
17 chairman of the Public Health and Welfare Committee of the
18 Senate and the chairman and minority chairman of the Health
19 and Human Services Committee of the House of Representatives.
20 This methodology may be utilized by the council for public
21 reporting on comparative hospital complication rates.

22 Section 6. Data submission and collection.

23 (a) (1) Submission of data.--The council is hereby
24 authorized to collect and data sources are hereby required to
25 submit, upon request of the council, all data required in
26 this section, according to uniform submission formats, coding
27 systems and other technical specifications necessary to
28 render the incoming data substantially valid, consistent,
29 compatible and manageable using electronic data processing
30 according to data submission schedules, such schedules to

1 avoid, to the extent possible, submission of identical data
2 from more than one data source, established and promulgated
3 by the council in regulations pursuant to its authority under
4 section 5(b). If payor data is requested by the council, it
5 shall, to the extent possible, be obtained from primary payor
6 sources. The council shall not require any data sources to
7 contract with any specific vendor for submission of any
8 specific data elements to the council.

9 (1.1) Any vendor shall comply with data submission
10 guidelines established in the report submitted under section
11 17.2. The council shall maintain a vendor list of at least
12 two vendors that may be chosen by any data source for
13 submission of any specific data elements.

14 (2) Except as provided in this section, the council may
15 adopt any nationally recognized methodology to adjust data
16 submitted under subsection (c) for severity of illness. Every
17 three years after the effective date of this paragraph, the
18 council shall solicit bids from third-party vendors to adjust
19 the data. The solicitation shall be in accordance with 62
20 Pa.C.S. (relating to procurement). Except as provided in
21 subparagraph (i), in carrying out its responsibilities, the
22 council shall not require health care facilities to report
23 data elements which are not included in the manual developed
24 by the national uniform billing committee. The following
25 apply:

26 (i) Within 60 days of the effective date of this
27 paragraph, the council shall publish in the Pennsylvania
28 Bulletin a list of diseases, procedures and medical
29 conditions, not to exceed 35, for which data under
30 subsections (c)(21) and (d) shall be required. The chosen

1 list shall not represent more than 50% of total hospital
2 discharges, based upon the previous year's hospital
3 discharge data. Subsequent to the publication of the
4 list, any data submission requirements under subsections
5 (c)(21) and (d) previously in effect shall be null and
6 void for diseases, procedures and medical conditions not
7 found on the list. All other data elements pursuant to
8 subsection (c) shall continue to be required from data
9 sources. The council shall review the list and may add no
10 more than a net of three diseases, procedures or medical
11 conditions per year over a five-year period starting on
12 the effective date of this subparagraph. The adjusted
13 list of diseases, procedures and medical conditions shall
14 at no time be more than 50% of total hospital discharges.

15 (ii) If the current data vendor is unable to
16 achieve, on a per-chart basis, savings of at least 40% in
17 the cost of hospital compliance with the data abstracting
18 and submission requirements of this act by June 30, 2004,
19 as compared to June 30, 2003, then the council shall
20 disqualify the current vendor and reopen the bidding
21 process. The independent auditor shall determine the
22 extent and validity of the savings. In determining any
23 demonstrated cost savings, surveys of all hospitals in
24 this Commonwealth shall be conducted and consideration
25 shall be given at a minimum to:

26 (A) new costs, in terms of making the
27 methodology operational, associated with laboratory,
28 pharmacy and other information systems a hospital is
29 required to purchase in order to reduce hospital
30 compliance costs, including the cost of electronic

1 transfer of required data; and

2 (B) the audited direct personnel and related
3 costs of data abstracting and submission required.

4 (iii) Review by the independent auditor shall
5 commence by March 1, 2004, and shall conclude with a
6 report of findings by July 31, 2004. The report shall be
7 delivered to the council, the Governor, the Health and
8 Human Services Committee of the House of Representatives
9 and the Public Health and Welfare Committee of the
10 Senate.

11 * * *

12 (d) Provider quality and provider service effectiveness data
13 elements.--In carrying out its duty to collect data on provider
14 quality and provider service effectiveness under section 5(d)(4)
15 and subsection (c)(21), the council shall define a methodology
16 to measure provider service effectiveness which may include
17 additional data elements to be specified by the council
18 sufficient to carry out its responsibilities under section 5(d)
19 (4). The council may adopt a nationally recognized methodology
20 of quantifying and collecting data on provider quality and
21 provider service effectiveness until such time as the council
22 has the capability of developing its own methodology and
23 standard data elements. The council shall include in the
24 Pennsylvania Uniform Claims and Billing Form a field consisting
25 of the data elements required pursuant to subsection (c)(21) to
26 provide information on each provision of covered services
27 sufficient to permit analysis of provider quality and provider
28 service effectiveness within 180 days of commencement of its
29 operations pursuant to section 4. In carrying out its
30 responsibilities, the council shall not require health care

1 insurers to report on data elements that are not reported to
2 nationally recognized accrediting organizations, to the
3 Department of Health or to the Insurance Department in quarterly
4 or annual reports. The council shall not require reporting by
5 health care insurers in different formats than are required for
6 reporting to nationally recognized accrediting organizations or
7 on quarterly or annual reports submitted to the Department of
8 Health or to the Insurance Department. The council may adopt the
9 quality findings as reported to nationally recognized
10 accrediting organizations. Additional quality data elements must
11 be defined and released for public comment prior to the
12 promulgation of regulations pursuant to section 5(b). The public
13 comment period shall be no less than 30 days from the release of
14 these elements.

15 * * *

16 Section 10. Access to council data.

17 * * *

18 (b) Limitations on access.--Unless specifically provided for
19 in this act, neither the council nor any contracting system
20 vendor shall release and no data source, person, member of the
21 public or other user of any data of the council shall gain
22 access to:

23 * * *

24 (5) Any raw data disclosing discounts or differentials
25 between payments accepted by providers for services and their
26 billed charges obtained by identified payors from identified
27 providers unless the data is released in a Statewide,
28 aggregate format that does not identify any individual payor
29 or class of payors and the council assures that the release
30 of such information is not prejudicial or inequitable to any

1 individual payor or provider or group thereof. Payor data
2 shall be released to individual providers for purposes of
3 verification and validation prior to inclusion in a public
4 report. An individual provider shall verify and validate the
5 payor data within 30 days of its release to that specific
6 individual provider.

7 * * *

8 Section 3. The act is amended by adding sections to read:

9 Section 17.2. Health Care Cost Containment Council Act Review
10 Committee.

11 (a) Establishment.--There is hereby established an
12 independent committee to be known as the Health Care Cost
13 Containment Council Act Review Committee.

14 (b) Composition.--The committee shall consist of the
15 following voting members composed of and appointed as follows:

16 (1) One member appointed by the Governor.

17 (2) Four members appointed by the General Assembly, one
18 of whom shall be appointed by each of the following:

19 (i) one by the President pro tempore of the Senate;

20 (ii) one by the Minority Leader of the Senate;

21 (iii) one by the Majority Leader of the House of
22 Representatives; and

23 (iv) one by the Minority Leader of the House of
24 Representatives .

25 (3) Two representatives of the business community, at
26 least one of whom represents small business, and neither of
27 whom is primarily involved in the provision of health care or
28 health insurance, one of whom shall be appointed by the
29 President pro tempore of the Senate and one of whom shall be
30 appointed by the Speaker of the House of Representatives from

1 a list of four qualified persons recommended by the
2 Pennsylvania Chamber of Business and Industry.

3 (4) Two representatives of organized labor, one of whom
4 shall be appointed by the President pro tempore of the Senate
5 and one of whom shall be appointed by the Speaker of the
6 House of Representatives from a list of four qualified
7 persons recommended by the Pennsylvania AFL-CIO.

8 (5) One representative of consumers who is not primarily
9 involved in the provision of health care or health care
10 insurance, appointed by the Governor from a list of three
11 qualified persons recommended jointly by the President pro
12 tempore of the Senate and the Speaker of the House of
13 Representatives.

14 (6) One representative of hospitals, appointed by the
15 Governor from a list of three qualified hospital
16 representatives recommended by the Hospital and Health System
17 Association of Pennsylvania.

18 (7) One representative of physicians, appointed by the
19 Governor from a list of three qualified physician
20 representatives recommended jointly by the Pennsylvania
21 Medical Society and the Pennsylvania Osteopathic Medical
22 Society.

23 (8) One representative of nurses, appointed by the
24 Governor from a list of three qualified representatives
25 recommended by the Pennsylvania State Nurses Association.

26 (9) One representative of the Blue Cross and Blue Shield
27 plans in Pennsylvania, appointed by the Governor from a list
28 of three qualified persons recommended jointly by the Blue
29 Cross and Blue Shield plans of Pennsylvania.

30 (10) One representative of commercial insurance

1 carriers, appointed by the Governor from a list of three
2 qualified persons recommended by the Insurance Federation of
3 Pennsylvania, Inc.

4 (c) Chairperson.--The appointment made by the Governor under
5 subsection (b)(1) shall serve as chairman of the committee.

6 (d) Quorum.--Eleven members shall constitute a quorum for
7 the transaction of any business, and the act by the majority of
8 the members present at any meeting in which there is a quorum
9 shall be deemed to be the act of the committee.

10 (e) Meetings.--

11 (1) All meetings of the committee shall be advertised
12 and conducted pursuant to 65 Pa.C.S. Ch. 7 (relating to open
13 meetings).

14 (2) All action taken by the committee shall be taken in
15 open public session, and action of the committee shall not be
16 taken except upon the affirmative vote of a majority of the
17 members of the committee present during meetings at which a
18 quorum is present.

19 (f) Compensation and expenses.--The members of the committee
20 shall not receive a salary or per diem allowance for serving as
21 members of the committee but shall be reimbursed for actual and
22 necessary expenses incurred in the performance of their duties.
23 Expenses may include reimbursement of travel and living expenses
24 while engaged in committee business.

25 (g) Commencement of committee.--

26 (1) Within 15 days after the effective date of this
27 section, each organization or individual required to submit a
28 list of recommended persons to the Governor, the President
29 pro tempore of the Senate or the Speaker of the House of
30 Representatives under subsection (b) shall submit the list.

1 (2) Within 30 days of the effective date of this
2 section, the Governor, the President pro tempore of the
3 Senate and the Speaker of the House of Representatives shall
4 make the appointments called for in subsection (b), and the
5 committee shall begin operations immediately following the
6 appointments.

7 (h) Responsibilities of the committee.--The committee shall
8 have the following powers and duties:

9 (1) To study, review and recommend changes to this act.

10 (2) To accept and review suggested changes to this act
11 submitted by members of the committee.

12 (3) To approve, by a majority vote of the members of the
13 committee, a report recommending statutory changes to this
14 act. The report shall include, at a minimum, the following:

15 (i) The establishment of an Internet database for
16 the general public showing Medicare reimbursement rates
17 for common covered services and treatment.

18 (ii) In consultation with experts in the fields of
19 quality data and outcome measures, the definition and
20 implementation of:

21 (A) A methodology by provider type for the
22 council to risk adjust quality data.

23 (B) A methodology for the council to collect and
24 disseminate data reflecting provider quality and
25 provider service effectiveness.

26 (4) To submit the report approved under paragraph (3) to
27 the President pro tempore of the Senate and the Speaker of
28 the House of Representatives by April 30, 2009.

29 (i) Committee support.--The council shall offer staff and
30 administrative support from the council or its work groups

1 necessary for the committee to carry out its duties under this
2 section.

3 Section 4. Section 19 of the act is amended to read:

4 Section 19. Sunset.

5 This act shall expire [June 30, 2008] June 30, 2013, unless
6 reenacted prior to that date. By September 1, [2007] 2012, a
7 written report by the Legislative Budget and Finance Committee
8 evaluating the management, visibility, awareness and performance
9 of the council shall be provided to the Public Health and
10 Welfare Committee of the Senate and the Health and Human
11 Services Committee of the House of Representatives. The report
12 shall include a review of the council's procedures and policies,
13 the availability and quality of data for completing reports [to
14 hospitals and outside vendor purchasers, the ability of the
15 council to become self-sufficient by selling data to outside
16 purchasers], whether there is a more cost-efficient way of
17 accomplishing the objectives of the council and the need for
18 reauthorization of the council.

19 Section 5. This act shall take effect as follows:

20 (1) The amendment of section 6 of the act shall take
21 effect January 1, 2010.

22 (2) The remainder of this act shall take effect
23 immediately.