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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2211 Session of  
2015

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INTRODUCED BY BAKER, FABRIZIO, SCHLOSSBERG, MILLARD, EVERETT AND  
WARD, JUNE 22, 2016

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REFERRED TO COMMITTEE ON HEALTH, JUNE 22, 2016

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AN ACT

1 Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An  
2 act to consolidate, editorially revise, and codify the public  
3 welfare laws of the Commonwealth," in public assistance,  
4 further providing for medical assistance payments for  
5 institutional care; in children and youth, further providing  
6 for provider submissions; in nursing facility assessments,  
7 further providing for definitions and for time periods; in  
8 intermediate care facilities for persons with an intellectual  
9 disability assessments, further providing for definitions and  
10 for time periods; in hospital assessments, further providing  
11 for definitions and for time period; in departmental powers  
12 and duties as to licensing, further providing for  
13 regulations; establishing the Pennsylvania eHealth  
14 Partnership Program; providing for the Pennsylvania eHealth  
15 Partnership Fund; abrogating a related regulation; and making  
16 a related repeal.

17 The General Assembly of the Commonwealth of Pennsylvania  
18 hereby enacts as follows:

19 Section 1. Section 443.1(7)(iv) of the act of June 13, 1967  
20 (P.L.31, No.21), known as the Human Services Code, amended July  
21 9, 2013 (P.L.369, No.55), is amended to read:

22 Section 443.1. Medical Assistance Payments for Institutional  
23 Care.--The following medical assistance payments shall be made  
24 on behalf of eligible persons whose institutional care is  
25 prescribed by physicians:

1 \* \* \*

2 (7) After June 30, 2007, payments to county and nonpublic  
3 nursing facilities enrolled in the medical assistance program as  
4 providers of nursing facility services shall be determined in  
5 accordance with the methodologies for establishing payment rates  
6 for county and nonpublic nursing facilities specified in the  
7 department's regulations and the Commonwealth's approved Title  
8 XIX State Plan for nursing facility services in effect after  
9 June 30, 2007. The following shall apply:

10 \* \* \*

11 (iv) Subject to Federal approval of such amendments as may  
12 be necessary to the Commonwealth's approved Title XIX State  
13 Plan, for each fiscal year beginning on or after July 1, 2011,  
14 the department shall apply a revenue adjustment neutrality  
15 factor to county and nonpublic nursing facility payment rates so  
16 that the estimated Statewide day-weighted average payment rate  
17 in effect for that fiscal year is limited to the amount  
18 permitted by the funds appropriated by the General Appropriation  
19 Act for the fiscal year. The revenue adjustment neutrality  
20 factor shall remain in effect until the sooner of June 30,  
21 [2016] 2019, or the date on which a new rate-setting methodology  
22 for medical assistance nursing facility services which replaces  
23 the rate-setting methodology codified in 55 Pa. Code Chs. 1187  
24 (relating to nursing facility services) and 1189 (relating to  
25 county nursing facility services) takes effect.

26 \* \* \*

27 Section 2. Section 704.3(a) of the act, amended December 28,  
28 2015 (P.L.500, No.92), is amended to read:

29 Section 704.3. Provider Submissions.--(a) For fiscal years  
30 2013-2014[, 2014-2015 and 2015-2016] through 2016-2017, a

1 provider shall submit documentation of its costs of providing  
2 services; and the department shall use such documentation, to  
3 the extent necessary, to support the department's claim for  
4 Federal funding and for State reimbursement for allowable direct  
5 and indirect costs incurred in the provision of out-of-home  
6 placement services.

7 \* \* \*

8 Section 3. The definition of "medical assistance provider"  
9 in section 801-A of the act, amended June 30, 2007 (P.L.49,  
10 No.16), is amended to read:

11 Section 801-A. Definitions.--As used in this article--

12 \* \* \*

13 "Medical assistance provider" means a person or entity  
14 enrolled by the Department of [Public Welfare] Human Services as  
15 a provider of services in the medical assistance program.

16 \* \* \*

17 Section 4. Section 815-A of the act, amended June 30, 2012  
18 (P.L.668, No.80), is amended to read:

19 Section 815-A. Time periods.--The assessment authorized in  
20 this article shall not be imposed prior to July 1, 2003, or  
21 after June 30, [2016] 2019.

22 Section 5. The definitions of "department," "medical  
23 assistance program" or "program" and "secretary" in section 801-  
24 C of the act, amended July 9, 2013 (P.L.369, No.55), are amended  
25 to read:

26 Section 801-C. Definitions.

27 The following words and phrases when used in this article  
28 shall have the meanings given to them in this section unless the  
29 context clearly indicates otherwise:

30 \* \* \*

1 "Department." The Department of [Public Welfare] Human  
2 Services of the Commonwealth.

3 \* \* \*

4 "Medical assistance program" or "program." The medical  
5 assistance program as administered by the Department of [Public  
6 Welfare] Human Services.

7 "Secretary." The Secretary of [Public Welfare] Human  
8 Services of the Commonwealth.

9 \* \* \*

10 Section 6. Section 811-C(b) of the act, amended July 9, 2013  
11 (P.L.369, No.55), is amended to read:

12 Section 811-C. Time periods.

13 \* \* \*

14 (b) Cessation.--The assessment authorized under this article  
15 shall cease June 30, [2016] 2019, or earlier, if required by  
16 law.

17 Section 7. The definitions of "general acute care hospital"  
18 and "high volume Medicaid hospital" in section 801-E of the act,  
19 reenacted October 22, 2010 (P.L.829, No.84), are amended to  
20 read:

21 Section 801-E. Definitions.

22 The following words and phrases when used in this article  
23 shall have the meanings given to them in this section unless the  
24 context clearly indicates otherwise:

25 \* \* \*

26 "General acute care hospital." A hospital other than a  
27 hospital that the Secretary of [Public Welfare] Human Services  
28 has determined meets one of the following:

29 (1) Is excluded under 42 CFR 412.23(a), (b), (d), (e) and  
30 (f) (relating to Excluded hospitals: Classifications) as of

1 March 20, 2008, from reimbursement of certain Federal funds  
2 under the prospective payment system described by 42 CFR 412  
3 (relating to prospective payment systems for inpatient hospital  
4 services).

5 (2) Is a Federal veterans' affairs hospital.

6 (3) Is a high volume Medicaid hospital.

7 (4) Provides care, including inpatient hospital services, to  
8 all patients free of charge.

9 (5) A free-standing acute care hospital organized primarily  
10 for the treatment of and research on cancer and is an exempt  
11 hospital under section 801-G.

12 "High volume Medicaid hospital." A hospital that the  
13 Secretary of [Public Welfare] Human Services has determined  
14 meets all of the following:

15 (1) is a nonprofit hospital subsidiary of a State-related  
16 institution as that term is defined in 62 Pa.C.S. § 103  
17 (relating to definitions); and

18 (2) provides more than 90,000 days of care to medical  
19 assistance patients annually.

20 \* \* \*

21 Section 8. Section 808-E(a) of the act, amended July 9, 2013  
22 (P.L.369, No.55), is amended to read:

23 Section 808-E. Time period.

24 (a) Cessation.--The assessment authorized under this article  
25 shall cease June 30, [2016] 2019.

26 \* \* \*

27 Section 9. Section 1021(c) of the act, amended July 25, 2007  
28 (P.L.402, No.56), is amended to read:

29 Section 1021. Regulations.--\* \* \*

30 [(c) The department shall have enforcement and licensure

1 staff dedicated solely to assisted living residences. All  
2 inspections of residences dually licensed as assisted living  
3 residences and personal care homes shall be conducted by a team  
4 of surveyors comprised of both personal care home and assisted  
5 living residence surveyors.]

6 \* \* \*

7 Section 10. The act is amended by adding an article to read:

8 ARTICLE XIV-C

9 PENNSYLVANIA eHEALTH PARTNERSHIP PROGRAM

10 Section 1401-C. Definitions.

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

14 "Board." The Pennsylvania eHealth Partnership Advisory  
15 Board.

16 "Department." The Department of Human Services of the  
17 Commonwealth.

18 "Electronic health record." An electronic record of health-  
19 related information relating to an individual that is created,  
20 gathered, managed and consulted by health care providers or  
21 payers.

22 "Fund." The Pennsylvania eHealth Partnership Fund.

23 "Health care provider." A person licensed by the  
24 Commonwealth to provide health care or professional clinical  
25 services. The term includes:

26 (1) A "health care practitioner" as defined in section  
27 103 of the act of July 19, 1979 (P.L.130, No.48), known as  
28 the Health Care Facilities Act.

29 (2) A "health care provider" as defined in section 103  
30 of the Health Care Facilities Act.

1           (3) A public health authority.

2           (4) A pharmacy.

3           (5) A laboratory.

4           (6) A person that provides items or services described  
5 in section 1861(s) of the Social Security Act (49 Stat. 620,  
6 42 U.S.C. § 1395x(s)).

7           (7) A "provider of services" as defined in section  
8 1861(u) of the Social Security Act (49 Stat. 620, 42 U.S.C. §  
9 1395x(u)).

10 "Health information." Information, whether oral or recorded,  
11 in any form or medium, that is created or received by a health  
12 care provider relating to the following:

13           (1) The past, present or future physical or mental  
14 health or medical condition of an individual.

15           (2) The past, present or future payment, treatment or  
16 operations for the provision of health care to an individual.

17 "Health information exchange." A Statewide interoperable  
18 system established under this article that electronically moves  
19 and exchanges health information between approved participating  
20 health care providers or health information organizations in a  
21 manner that ensures the secure exchange of health information to  
22 provide care to patients.

23 "Health information organization." An information technology  
24 infrastructure with an interoperable system that is established  
25 by a health care provider or payer or that connects  
26 participating health care providers or payers to ensure the  
27 secure digital exchange of health information among participants  
28 engaged in the care of the patient.

29 "Health information technology." Hardware, software,  
30 integrated technologies or related licenses, intellectual

1 property, upgrades or packaged solutions sold as services that  
2 are designed for or support the use by health care entities or  
3 patients for the electronic creation, maintenance, access or  
4 exchange of health information.

5 "Interoperability." The ability of different operating and  
6 software systems to employ federally-recognized standards to  
7 exchange data securely, accurately, effectively and in a manner  
8 that maintains and preserves the clinical purpose of the data.

9 "Participant." A person or entity which has been approved by  
10 the department to send and receive health information using the  
11 health information exchange.

12 "Payer." An entity that contracts or offers to contract to  
13 provide, deliver, pay or reimburse any of the costs of health  
14 care services, including an employer, a health care plan, the  
15 Federal Government, the Commonwealth, a municipality, a labor  
16 union or an entity licensed under any of the following:

17 (1) The act of May 17, 1921 (P.L.682, No.284), known as  
18 The Insurance Company Law of 1921.

19 (2) The act of December 29, 1972 (P.L.1701, No.364),  
20 known as the Health Maintenance Organization Act.

21 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan  
22 corporations).

23 (4) 40 Pa.C.S. Ch. 63 (relating to professional health  
24 services plan corporations).

25 "Secretary." The Secretary of Human Services of the  
26 Commonwealth.

27 Section 1402-C. Pennsylvania eHealth Partnership Program.

28 There is hereby established the Pennsylvania eHealth  
29 Partnership Program within the department.

30 Section 1403-C. Powers and duties



1 The department's powers and duties include the following:

2 (1) Develop, establish and maintain a health information  
3 exchange that complies with Federal and State law and that:

4 (i) Promotes efficient and effective communication  
5 among multiple health care providers, payers and  
6 participants.

7 (ii) Creates efficiencies and promotes accuracy in  
8 the delivery of health care.

9 (iii) Supports the ability to improve community  
10 health status.

11 (2) Determine criteria for organizations and individuals  
12 to become and remain participants in the health information  
13 exchange, including criteria for organizations and  
14 individuals to be suspended and disengaged as participants in  
15 the health information exchange.

16 (3) Develop and maintain a directory of health care  
17 provider's contact information to enable participants to  
18 share health information electronically.

19 (4) Develop and maintain standards to ensure  
20 interoperability.

21 (5) Establish and collect fees. Fees may include  
22 transaction fees, subscription fees or other fees or  
23 donations, to cover costs of implementation and operation of  
24 the health information exchange or for other services  
25 provided under this article. Receipt of services provided by  
26 or through the department may be conditioned on payment of  
27 fees. Participation in the health information exchange by any  
28 health care provider, payer, consumer or any other person is  
29 voluntary.

30 (6) Establish an advisory board under section 1404-C

1 with a diverse membership representing interested and  
2 affected groups and individuals.

3 (7) Develop and conduct public information programs to  
4 educate and inform consumers and patients about health  
5 information.

6 (8) Submit an annual report to the Governor, the  
7 President pro tempore of the Senate and the Speaker of the  
8 House of Representatives for distribution to appropriate  
9 legislative committees on the activities of the program for  
10 the year, including a summary of the receipts and  
11 expenditures, a list of contracts and a summary of any  
12 reportable security breaches that occurred and corrective  
13 actions that were taken.

14 (9) Develop and maintain:

15 (i) a registry of patients choosing to opt out of  
16 the health information exchange; and

17 (ii) procedures to re-enroll into the health  
18 information exchange.

19 (10) Promulgate regulations, as necessary, to implement  
20 and administer this article.

21 (11) Perform all other activities in furtherance of the  
22 purposes of this article.

23 Section 1404-C. Pennsylvania eHealth Partnership Advisory Board.

24 (a) Establishment.--The Pennsylvania eHealth Partnership  
25 Advisory Board is established within the department as an  
26 advisory board.

27 (b) Composition.--The board shall consist of 16 members, who  
28 must be residents of this Commonwealth, with two additional, ex  
29 officio nonvoting members selected by members of the board,  
30 composed and appointed as follows:

1           (1) The secretary or a designee, who shall be an  
2 employee of the department in writing prior to service.

3           (2) The Secretary of Health or a designee, who shall be  
4 an employee of the Department of Health designated in writing  
5 prior to service.

6           (3) The Insurance Commissioner or a designee, who shall  
7 be an employee of the Insurance Department designated in  
8 writing prior to service.

9           (4) One representative of the health care community  
10 focused on an unserved or underserved rural or urban patient  
11 population, who shall be appointed by the secretary from a  
12 list of individuals submitted for consideration by both the  
13 Pennsylvania Area Health Education Center and the  
14 Pennsylvania Association of Community Health Centers.

15           (5) One physician or nurse appointed by the secretary  
16 from lists of individuals submitted by the Pennsylvania  
17 Medical Society, the Pennsylvania Osteopathic Medical  
18 Association, the Pennsylvania Academy of Family Physicians  
19 and the Pennsylvania State Nurses Association. At least one  
20 name on each list shall include an individual residing in an  
21 unserved or underserved rural patient population area and an  
22 individual in an unserved or underserved urban patient  
23 population area.

24           (6) One hospital representative appointed by the  
25 secretary from a list of individuals submitted by the  
26 Hospital and Healthsystem Association of Pennsylvania. At  
27 least one name on this list shall include an individual  
28 residing in an unserved or underserved rural or urban patient  
29 population area.

30           (7) One insurance representative appointed by the

1 secretary from lists of individuals submitted by the Blue  
2 Cross and Blue Shield plans and the Insurance Federation of  
3 Pennsylvania.

4 (8) One representative of an assisted living residence,  
5 personal care home, long-term care nursing facility,  
6 continuing care facility or behavioral or mental health  
7 facility who shall be appointed by the secretary.

8 (9) Two consumer representatives appointed by the  
9 secretary who are not primarily involved in providing health  
10 care or health care insurance. At least one of these  
11 individuals shall have expertise in health care or health  
12 care information technology or the laboratory industry.

13 (10) Three representatives from established health  
14 information organizations appointed by the President pro  
15 tempore of the Senate, in consultation with the Majority  
16 Leader and the Minority Leader of the Senate, each of whom  
17 shall recommend one person. At least one of these  
18 representatives shall be from the private information  
19 technology sector with knowledge about security issues.

20 (11) Three representatives from established health  
21 information organizations appointed by the Speaker of the  
22 House of Representatives, in consultation with the Majority  
23 Leader and the Minority Leader of the House of  
24 Representatives, each of whom shall recommend one person. At  
25 least one of these representatives shall be from the private  
26 information technology sector with knowledge about security  
27 issues.

28 (c) Ex officio members.--The Secretary of Health, the  
29 Insurance Commissioner, or their designees, shall serve on the  
30 board as nonvoting ex officio members of the board.

1 (d) Terms.--Except a member as specified in subsection (b)  
2 (1), (2) or (3), a member of the board shall serve for a term of  
3 three years after completion of the initial terms designated in  
4 subsection (h) and may not be eligible to serve more than two  
5 full consecutive three-year terms. A member shall remain on the  
6 board until the member's replacement is appointed.

7 (e) Quorum.--A majority of the appointed members of the  
8 board shall constitute a quorum for the transaction of any  
9 business. An act by a majority of the members present at a  
10 meeting at which there is a quorum shall be deemed to be that of  
11 the board.

12 (f) Meetings.--The board shall hold meetings at least  
13 quarterly and may provide for special meetings as the board  
14 deems necessary. The meetings shall be subject to the  
15 requirements of 65 Pa.C.S. Ch. 7 (relating to open meetings).  
16 Meetings of the board may be held anywhere within this  
17 Commonwealth.

18 (g) Chairperson.--The secretary shall appoint a chairperson  
19 of the board. The members of the board shall annually elect, by  
20 a majority vote of the members, a vice chairperson from among  
21 the members of the board.

22 (h) Initial appointment and vacancy.--

23 (1) A member appointed under subsection (b) (4), (5) or  
24 (6) shall be appointed to an initial term of two years with  
25 the option for reappointment to two additional three-year  
26 terms.

27 (2) A member appointed under subsection (b) (7) or (8)  
28 shall be appointed to an initial term of one year with the  
29 option for reappointment to two additional three-year terms.

30 (3) A member appointed under subsection (b) (9) shall be

1 appointed to an initial term of three years with the option  
2 for reappointment to one additional three-year term.

3 (4) A member appointed under subsection (b)(10) or (11)  
4 shall be appointed to an initial term that coincides with the  
5 appointing members' terms with the option for reappointment  
6 to two additional three-year terms.

7 (i) Formation.--The board shall be formed within 90 days of  
8 the effective date of this article.

9 (j) Reimbursement.--The members of the board may not receive  
10 a salary or per diem allowance for serving as members of the  
11 board but shall be reimbursed for actual and necessary expenses  
12 incurred in the performance of the members' duties.

13 Section 1405-C. Establishment of fund.

14 The Pennsylvania eHealth Partnership Fund, established under  
15 section 501 of the act of July 5, 2012 (P.L.1042, No.121), known  
16 as the Pennsylvania eHealth Information Technology Act, is  
17 continued.

18 Section 1406-C. Funds.

19 All money deposited into the fund shall be held for the  
20 purposes under this article and may not be considered a part of  
21 the General Fund but shall be used only to effectuate the  
22 purposes of this article as determined by the department. All  
23 interest earned from the investment or deposit of money  
24 accumulated in the fund shall be deposited in the fund for the  
25 same use.

26 Section 1407-C. Consent and confidentiality of health  
27 information.

28 (a) Construction.--

29 (1) Nothing in this article shall be construed to  
30 prohibit a health care provider or payer from obtaining and

1 storing a patient's health records in electronic form or  
2 exchanging health information with another health care  
3 provider or payer in accordance with Federal law or State law  
4 other than this article.

5 (2) Nothing in this article shall supersede or limit any  
6 other law which requires additional consent to the release of  
7 health information or otherwise establishes greater  
8 restrictions or limitations on the release of health  
9 information.

10 (b) Consent.--The department shall publish a consent form  
11 including notice of a patient's ability to decline to allow  
12 exchange of the patient's electronic health information in the  
13 health information exchange. The notice shall include, at a  
14 minimum and in plain language, the following information:

15 (1) Definition of a health information exchange.

16 (2) Explanation of the benefits of participation in the  
17 health information exchange.

18 (3) Explanation of the limits of the patient's ability  
19 to decline the release or exchange of the patient's health  
20 information with the health information exchange.

21 (4) Explanation of the manner in which the health  
22 information exchange will address privacy issues.

23 (5) Explanation of the manner in which an individual may  
24 decline to participate in the health information exchange.

25 (c) Opt-out registry.--

26 (1) In order to decline participation in the health  
27 information exchange, a patient must sign and date a form  
28 declining participation. If appropriate, the signature must  
29 be witnessed by the patient's representative. Copies of the  
30 completed form shall be sent by the provider within five

1 business days to the department to be included in an opt-out  
2 registry.

3 (2) After receipt of the form, the department shall  
4 within five business days notify health information  
5 organizations that the patient has not authorized the release  
6 of the health information through the health information  
7 exchange.

8 (3) Once the patient is included in the opt-out  
9 registry, the department shall notify the patient. The  
10 notification shall include a copy of the completed form  
11 signed by the patient or electronic notification to the  
12 patient.

13 (4) The patient alone shall decide to opt out of the  
14 health information exchange.

15 (d) Disclosure.--

16 (1) The department may not disclose, without prior  
17 written consent of the patient, any health information that  
18 the department or its employees, agents or contractors retain  
19 under this article, or to which the department or its agents  
20 or contractors have access or any other health records  
21 maintained or accessible by the department under this  
22 article, to any person who is not an authorized employee,  
23 agent or contractor of the department, except as required or  
24 permitted by law.

25 (2) Sharing health information among participants in the  
26 health information exchange shall not be considered a  
27 disclosure under paragraph (1).

28 (3) Violations of this subsection:

29 (i) Shall subject employees, agents and contractors  
30 to administrative discipline, including discharge and



1           suspension.

2           (ii) Shall subject contractors to monetary penalties  
3           or contract revocation or suspension.

4           (e) Construction.--Nothing in this article may be construed  
5 to alter a proprietary interest held by any participant in any  
6 record, data or information released, accepted or included in  
7 the health information exchange, except insofar as the paperwork  
8 approved by the department may require participants to license  
9 those interests by contract in order to allow for the free flow  
10 of information.

11 Section 1408-C. Nonapplicability.

12           (a) This article is subject to 1 Pa.C.S. § 2310 (relating to  
13 sovereign immunity reaffirmed; specific waiver).

14           (b) Health information or personally identifying information  
15 shall not be considered a public record for purposes of the act  
16 of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know  
17 Law.

18           (c) Nothing in this article is intended to affect common law  
19 or statutory rights or obligations with respect to patient  
20 accessibility to their electronic or nonelectronic medical  
21 records.

22           (d) Nothing in this article shall be construed to alter,  
23 limit or supersede any other provision of law regarding the  
24 Department's duties, powers, responsibilities and authority that  
25 exist separate from this article.

26           Section 11. Repeals are as follows:

27           (1) The General Assembly declares that the repeal under  
28           paragraph (2) is necessary to effectuate the addition of  
29           Article XIV-C of the act.

30           (2) The act of July 5, 2012 (P.L.1042, No.121), known as

1 the Pennsylvania eHealth Information Technology Act, is  
2 repealed.

3 Section 12. Except as otherwise provided in Article XIV-C of  
4 the act, all activities initiated under the act of July 5, 2012  
5 (P.L.1042, No.121), known as the Pennsylvania eHealth  
6 Information Technology Act, shall continue and remain in full  
7 force and effect and may be completed under Article XIV-C of the  
8 act. Orders, regulations, rules and decisions which were made  
9 under the Pennsylvania eHealth Information Technology Act and  
10 which are in effect on the effective date of this section shall  
11 remain in full force and effect until revoked, vacated or  
12 modified under Article XIV-C of the act. Contracts and  
13 obligations entered into under the Pennsylvania eHealth  
14 Information Technology Act are not affected nor impaired by the  
15 repeal of the Pennsylvania eHealth Information Technology Act.  
16 All contracts, grants, procurement documents and partnership  
17 agreements under the Pennsylvania eHealth Information Technology  
18 Act in effect on the effective date of this section are assigned  
19 to the Department of Human Services.

20 Section 13. This act shall take effect immediately.