AMENDED IN ASSEMBLY MARCH 13, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 2967

Introduced by Assembly Member ~~Fuentes~~ *Lieber*

February 22, 2008

An act to add Chapter 4 (commencing with Section 128850) to Part 5 of Division 107 of the Health and Safety Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

AB 2967, as amended, ~~Fuentes~~ *Lieber*. Health care cost and quality transparency.

Existing law creates the California Health and Human Services Agency.

This bill would create the California Health Care Cost and Quality Transparency Committee in the Health and Human Services Agency, with specified powers and duties, including the development of a health care cost and quality transparency plan, which would include various strategies to improve medical data collection and reporting practices. The bill would require the Secretary of California Health and Human Services and the committee to undertake duties specified in the bill, including implementing various strategies to improve health care quality, and related performance measures. This bill would require the secretary, or the Office of Statewide Health Planning and Development to adopt regulations as necessary to carry out the bill's requirements.

The bill would provide for the confidentiality of information obtained in the course of the data collection activities implemented under the bill. The bill would establish the Health Care Cost and Quality Transparency Fund, consisting of specified fees authorized under the

bill. The fund would be used, upon appropriation, to support implementation of the activities required under the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 4 (commencing with Section 128850) is added to Part 5 of Division 107 of the Health and Safety Code, to read:

Chapter 4. Health Care Cost and Quality Transparency

Article 1. General Provisions

128850. The Legislature hereby finds and declares all of the following:

(a) The steady rise in health costs is eroding health access, straining public health and finance systems, and placing an undue burden on the state's economy.

(b) The effective use and distribution of health care data and meaningful analysis of that data will lead to greater transparency in the health care system, resulting in improved health care quality and outcomes, more cost-effective care, and improvements in life expectancy, reduced death rates, and improved overall public health.

(c) Hospitals, physicians, health care providers, and health insurers that have access to systemwide performance data can use the information to improve patient safety, efficiency of health care delivery, and quality of care, ~~leading~~ *which would lead* to quality improvement and costs savings throughout the health care system.

(d) The State of California is uniquely positioned to collect, analyze, and report all payer data on health care utilization, quality, and costs in the state in order to facilitate value-based purchasing of health care and to support and promote continuous quality improvement among health plans and providers.

(e) Establishing statewide data and common measurement, and analyses of health care costs, quality, and outcomes will identify appropriate health care utilization and ensure the highest quality of health care services for all Californians.

(f) Comprehensive statewide data and common measurement will allow analysis of the provision of care, so that efforts can be undertaken to improve health outcomes for all Californians, including those groups with demonstrated health disparities.

(g) It is therefore the intent of the Legislature that the State of California assume a leadership role in measuring performance and value in the health care system. By establishing the primary statewide data and common measurement, and analyses of health care costs, quality, and outcomes, and by providing sufficient revenues to adequately analyze and report meaningful performance measures related to health care costs, safety, and quality, the Legislature intends to promote competition, identify appropriate health care utilization, and ensure the highest quality of health care services for all Californians.

(h) The Legislature further intends to reduce duplication and inconsistency in the collection, analysis, and dissemination of health care performance information within state government and among both public and private entities by coordinating health care data development, collection, analysis, evaluation, and dissemination.

(i) It is further the intent of the Legislature that the data collected be used for the transparent public reporting of quality and cost efficiency information regarding all levels of the health care system, including health care service plans and health insurers, hospitals and other health facilities, and medical groups, physicians, and other licensed health professionals in independent practice, so that health care plans and providers can improve their performance and deliver safer, better health care more affordably; so that purchasers can know which health care services reduce morbidity, mortality, and other adverse health outcomes; so that consumers can choose whether and where to have health care provided; and so that policymakers can effectively monitor the health care delivery system to ensure quality and value for all purchasers and consumers.

(j) The Legislature further intends that all existing duties, powers, and authority relating to health care cost, quality, and safety data collection and reporting under current state law continue in full effect.

128851. As used in this chapter, the following terms have the following meanings:

(a) "Administrative claims data" means data that are submitted electronically or otherwise to, or collected by, health insurers, health care service plans, administrators, or other payers of health care services and that are submitted to, or collected for, the purposes of payment to any licensed health professional, medical provider group, laboratory, pharmacy, hospital, imaging center, or any other facility or person that is requesting payment for the provision of medical care.

(b) "Committee" means the Health Care Cost and Quality Transparency Committee.

(c) "Data source" means a licensed physician or any other licensed health professional in independent practice, medical provider group, health facility, health care service plan licensed by the Department of Managed Health Care, health insurer certificated by the Insurance Commissioner to sell health insurance, any state agency providing or paying for health care or collecting health care data or information, or any other payer for health care services in California.

(d) "Encounter data" means data related to treatment or services rendered by providers to patients that may be reimbursed on a fee-for-service statement.

(e) "Group" or "medical provider group" means an affiliation of physicians and other health care professionals, whether a partnership, corporation, or other legal form, with the primary purpose of providing medical care.

(f) "Health facility" or "health facilities" means health facilities required to be licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(g) "Licensed health professional in independent practice" means a licensed health professional who is authorized to order or direct health services for patients or who is eligible to bill Medi-Cal for services. The term includes, but is not limited to, nurse practitioners, physician assistants, dentists, chiropractors, and pharmacists.

(h) "Office" means the Office of Statewide Health Planning and Development.

(i) "Risk-adjusted outcomes" means the clinical outcomes of patients grouped by diagnoses or procedures, that have been adjusted for demographic and clinical factors.

(j) "Secretary" means the Secretary of California Health and Human Services.

128852. Any limitation on the addition of data elements pursuant to Chapter 1 (commencing with Section 128675) shall be inapplicable to the extent determined necessary to implement the responsibilities under this chapter. All data collected by the office shall be available to the committee and secretary for the purposes of carrying out their responsibilities under this chapter. The office shall make available to the committee any and all data files, information, and staff resources as may be necessary to assist in and support the responsibilities of the committee.

Article 2. Health Care Cost and Quality Transparency Committee

128855. There is hereby created in the California Health and Human Services Agency the Health Care Cost and Quality Transparency Committee, composed of 16 members. The appointments shall be made as follows:

(a) The Governor shall appoint 10 members as follows:

(1) One researcher with experience in health care data and cost efficiency research.

(2) One representative of private hospitals.

(3) One representative of public hospitals.

(4) One representative of an integrated multispecialty medical group.

(5) One representative of health insurers or health care service plans.

(6) One representative of licensed health professionals in independent practice.

(7) One representative of large employers that purchase group health care coverage for employees and who is not also a supplier or broker of health care coverage.

(8) One representative of a labor union.

(9) One representative of employers that purchase group health care coverage for their employees or a representative of a nonprofit organization that demonstrates experience working with employers to enhance value and affordability of health care coverage.

(10) One representative of pharmacists.

(b) The Senate Committee on Rules shall appoint three members as follows:

(1) One representative of a labor union.

(2) One representative of consumers with a demonstrated record of advocating health care issues on behalf of consumers.

(3) One representative of physicians and surgeons who is a practicing patient-care physician licensed in the State of California.

(c) The Speaker of the Assembly shall appoint three members as follows:

(1) One representative of consumers with a demonstrated record of advocating health care issues on behalf of consumers.

(2) One representative of small employers that purchase group health care coverage for employees and who is not also a supplier or broker in health care coverage.

(3) One representative of a nonprofit labor-management purchaser coalition that has a demonstrated record of working with employers and employee associations to enhance value and affordability in health care.

(d) The following members shall serve in an ex officio, nonvoting capacity:

(1) The Executive Officer of the California Public Employees Retirement System or his or her designee.

(2) The Director of the Department of Managed Health Care or his or her designee.

(3) The Insurance Commissioner or his or her designee.

(4) The Director of the Department of Public Health or his or her designee.

(5) The Director of the State Department of Health Care Services or his or her designee.

(e) The Governor shall designate a member to serve as chairperson for a two-year term. No member may serve more than two, two-year terms as chairperson. All appointments shall be for four-year terms; provided. However, the initial term shall be two years for members initially filling the positions set forth in paragraphs (1), (2), (4), and (6) of subdivision (a), paragraph (2) of subdivision (b), and paragraph (2) of subdivision (c).

128856. The committee shall meet at least once every two months, or more often, if necessary to fulfill its duties.

128857. The members of the committee shall receive reimbursement for any actual and necessary expenses incurred in connection with their duties as members of the committee.

128858. The secretary shall provide or contract for administrative support for the committee.

128859. The committee shall do all of the following:

(a) Develop and recommend to the secretary the health care cost and quality transparency plan, as provided in Article 3 (commencing with Section 128865).

(b) Monitor the implementation of the health care cost and quality transparency plan.

(c) Issue an annual public report, on or before March 1, on the status of implementing this chapter, the resources necessary to fully implement this chapter, and any recommendations for changes to the statutes, regulations, or the transparency plan that would advance the purposes of this chapter.

128860. (a) The committee shall appoint at least one technical committee, and may appoint additional technical committees as the committee deems appropriate, and shall include on each technical committee academic and professional experts with expertise related to the activities of the committee.

(b) (1) The committee shall appoint at least one clinical advisory panel and may appoint additional panels specific to issues that require additional or different clinical expertise. Each clinical panel shall contain a majority of clinicians with expertise related to the activities of the committee and any issue under consideration and shall also include experts in collecting and reporting data. Each clinical panel shall also include two members of the committee, one of whom shall be a representative of hospitals or health professionals and the other of whom shall be a representative of consumers, purchasers, or labor unions.

(2) For the initial plan, the committee shall appoint at least one advisory clinical panel that shall do all of the following:

(A) Issue a written report of recommendations to implement the goals set forth by the committee, including how to measure quality improvement, necessary data elements, and appropriate risk-adjustment methodology. The report shall be submitted to the committee within the time period specified by the committee. The committee shall either adopt the recommendations of the clinical panel or, by a two-thirds vote of the committee, reject the

recommendations. If the committee rejects the recommendations, it shall issue a written finding and rationale for rejecting the recommendations, and shall refer the issue back to the clinical panel and request additional or modified recommendations in specific areas in which the committee found the recommendations deficient.

(B) Make recommendations to the committee concerning the specific data to be collected and the methods of collection to implement this chapter, assure that the results are statistically valid and accurate, and state any limitations on the conclusions that can be drawn from the data.

(C) Make recommendations concerning the measures necessary to implement the reporting requirements in a manner that is cost effective, reasonable for data sources, and is reliable, timely, and relevant to consumers, purchasers, and health providers.

(c) The members of the technical committees and clinical advisory panels shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of the technical committee or clinical advisory panel.

(d) The committee shall provide opportunities for participation from consumers and patients as well as purchasers and providers at all committee meetings.

128861. The committee, technical committee, and clinical advisory panel members, and any contractors, shall be subject to the conflict-of-interest policy of the California Health and Human Services Agency.

Article 3. Health Care Cost and Quality Transparency Plan

128865. (a) (1) The committee, within one year after its first meeting, shall develop and recommend to the secretary an initial health care cost and quality transparency plan.

(2) The committee shall periodically review and recommend updates to the Health Care Cost and Quality Transparency Plan. The committee shall conduct a full review every three years, and any recommendations resulting from the review shall be subject to Section 128866.

(3) The initial plan and updates to the plan shall result in public reporting of safety, quality, and cost efficiency information on the health care system. The purpose of the plan shall be to improve

health care cost efficiency, improve health system performance, and promote quality patient outcomes.

(4) In developing the initial plan and updates to the plan, the committee shall review existing data gathering and reporting, including existing voluntary efforts.

(5) In developing the initial plan and updates to the plan, the committee shall obtain the recommendation of the relevant clinical panel or panels, if any, on the measures to be reported.

(b) The plan shall include, but not be limited to, strategies to do all of the following:

(1) Measure and collect data related to health care safety and quality, utilization, health outcomes, and cost of health care services from health plans and insurers, medical groups, health facilities, and licensed health professionals.

(2) Measure each of the performance domains, including, but not limited to, safety, timeliness, effectiveness, efficiency, quality, and other domains as appropriate.

(3) Develop a valid methodology for collecting and reporting cost and quality information to ensure the integrity of the data and reflect the intensity, cost, and scope of services provided, and that the data are collected from the most appropriate data source.

(4) Measure and collect data related to disparities in health outcomes among various populations and communities, including racial and ethnic groups.

(5) Use and build on existing data collection standards, methods, and definitions to the greatest extent possible to accomplish the goals of this article in an efficient and effective manner including the data collected by the state and federal governments.

(6) Incorporate and utilize administrative claims data to the extent it is the most efficient method of collecting valid and reliable data.

(7) Improve coordination, alignment, and timeliness of data collection, state and federal reporting practices and standards, and existing mandatory and voluntary measurement and reporting activities by existing public and private entities, taking into account the reporting burden on providers.

(8) Provide public reports, analyses, and data on the health care quality, safety, and performance measures of health plans and insurers, medical groups, health facilities, licensed physicians, and other licensed health professionals in independent practice, that

are accurate, statistically valid, and descriptive of how the data were derived.

(9) Maintain patient confidentiality consistent with federal and state medical and patient privacy laws.

(10) Coordinate and streamline existing related data collection and reporting activities within state government.

(11) Participate in the monitoring of plan implementation, including a timeline and prioritization of the planned data collection, analyses, and reports.

(12) Participate in the monitoring of data collection, continuous quality improvement, and reporting functions.

(13) Assess compliance with data collection requirements needed to implement this chapter.

(14) Recommend a fee schedule sufficient to fund the implementation of this chapter.

(c) The secretary may contract with a qualified public or private agency or academic institution to assist in the review of existing data collection programs or to conduct other research or analysis deemed necessary for the committee or secretary to complete and implement the Health Care Cost and Quality Transparency Plan or to meet the obligations of this chapter.

128866. (a) Within 60 days of receipt of the Health Care Cost and Quality Transparency Plan recommended by the committee, the secretary shall do one of the following:

(1) Advise the committee that the recommended plan is accepted and implementing regulations shall be drafted and submitted to the Office of Administrative Law pursuant to the Administrative Procedures Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Refer the plan back to the committee and request additional or modified recommendations in specific areas in which the secretary finds the plan is deficient. If referred back to the committee, the secretary shall respond to any modified recommendation in the manner provided in this section.

(b) Every six years after implementation, commencing with 2014, the secretary shall report to the Legislature on the work of the committee and whether the committee should be continued in the manner described in this article or whether changes should be made to the law.

Article 4. Implementation of the Health Care Quality and Transparency Plan

128867. (a) After acceptance of the plan pursuant to Section 128866, the secretary shall be responsible for timely implementation of the approved plan. The secretary shall ensure timely implementation by the office, which shall include, but not be limited to, all of the following:

(1) Provide data, information, and reports as may be required by the committee to assist in its responsibilities under this chapter.

(2) Determine the specific data to be collected and the methods of collection to implement this chapter, consistent with the approved plan, and ensure that the results are statistically valid and accurate, as well as risk-adjusted, where appropriate.

(3) Determine the measures necessary to implement the reporting requirements in a manner that is cost effective and reasonable for data sources, and is timely, relevant, and reliable for consumers, purchasers, and providers.

(4) Collect the data consistent with the data reporting requirements of the approved plan, including, but not limited to, data on quality, health outcomes, cost, and utilization.

(5) Audit, as necessary, the accuracy of any or all data submitted to the lead agency pursuant to this chapter.

(6) Seek to establish agreements for voluntary reporting of health care claims and data from any and all health care data sources that are not subject to mandatory reporting pursuant to this chapter, in order to ensure the most comprehensive systemwide data on heath care costs and quality.

(7) Fully protect patient privacy and confidentiality, in compliance with federal and state privacy laws, while preserving the ability to analyze data. Any individual patient information obtained pursuant to this chapter shall be exempt from the disclosure requirements of the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(8) Adopt the same procedures for health care providers as those specified in Section 128750 and adopt substantially similar procedures for other data sources to ensure that all data sources identified in any outcome report have a reasonable opportunity to

review, comment on, and appeal any outcome report in which the data source is identified before it is released to the public.

(b) The secretary and office shall consult with the committee in implementing this chapter, and shall cooperate with the committee in fulfilling the committee's responsibility to monitor implementation activities.

(c) All state agencies shall cooperate with the secretary and the office to implement the Health Care Cost and Quality Transparency Plan approved by the secretary.

(d) The secretary or the office shall adopt regulations as are necessary to carry out the requirements of this chapter.

128868. Nothing in this chapter shall be construed to authorize the disclosure of any confidential information concerning contracted rates between health care providers and payers or any other data source, but nothing in this section shall prevent the disclosure of information on the relative or comparative cost to payers or purchasers of health care services, consistent with the requirements of this chapter.

128869. (a) Patient social security numbers and any other data elements that the office believes may be used to determine the identity of an individual patient shall be exempt from the disclosure requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(b) No person reporting data pursuant to this section shall be liable for damages in any action based on the use or misuse of patient-identifiable data that has been mailed or otherwise transmitted to the office pursuant to the requirements of this chapter.

(c) No communication of data or information by a data source to the committee, the secretary, or the office shall constitute a waiver of privileges preserved by Section 1156, 1156.1, or 1157 of the Evidence Code or Section 1370.

(d) Information, documents, or records from original sources otherwise subject to discovery or introduction into evidence shall not be immune from discovery or introduction into evidence merely because they were also provided to the committee or office pursuant to this chapter.

128870. The office shall solicit input from interested stakeholders and convene meetings to receive input on the creation

of a fee schedule to implement this section. This stakeholder process shall occur in a manner that allows for meaningful review of the information and fiscal projections by the interested stakeholders. After the stakeholder process has been convened and used in the development of a proposal, the office shall provide the secretary with a proposal that will, to the extent possible, identify a fee schedule and other financial resources for the implementation of this chapter and allow for the recovery of costs of implementing centralized data collection, and effective analysis and reporting activities under this chapter.

(b) The schedule of fees, including specific fees charged to each data source and user, shall be approved by the Legislature and Governor in the annual Budget Act. The annual budget of the committee shall be presented and justified to the Legislature with an annual work plan including a description of the data sources, data, elements, use of the data, and the number and frequency of reports to be made available.

(c) The total amount of fees charged by the office to a hospital to recover the costs of implementing this chapter, and the fees charged to that hospital pursuant to Section 127280 shall not exceed 0.06 percent of the gross operating cost of the hospital for the provision of health care services for its last fiscal year that ended on or before June 30 of the preceding calendar year.

128871. There is hereby established in the State Treasury the Health Care Cost and Quality Transparency Fund to support the implementation of this chapter. All fees and contributions collected by the office pursuant to Section 128870 shall be deposited in this fund and used to support the implementation of this chapter. Expenditures shall be subject to appropriation in the annual Budget Act.

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