SPONSOR: Rep. Bentz & Sen. S. McBride & Sen. Townsend
Reps. Morrison, Osienski; Sens. Hansen, Sokola

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 442
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE DELAWARE HEALTH CARE COMMISSION AND STATE OF DELAWARE HEALTH CARE SPENDING AND QUALITY BENCHMARKS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 9903, Title 16 of the Delaware Code by making insertions as shown by underline and deletions as shown by strikethrough as follows:

§ 9903. Duties and authority of the Commission.

(k) The Commission shall, in coordination with the Delaware Economic and Financial Advisory Council Health Care Spending Benchmark Subcommittee, be responsible for establishing and monitoring the State of Delaware Health Care Spending and Quality Benchmarks as follows:

(1) As used in this subsection

a. "DEFAC" means the Delaware Economic and Financial Advisory Council.

b. "Spending Benchmark" means the target annual per capita growth rate for Delaware's statewide total health care spending, expressed as the percentage growth from the prior year's per capita spending.

c. "Quality Benchmark" means the annual performance target for a priority Delaware population-health or quality-of-care concern.

d. "Payer" means a payer, a nongovernment health plan and includes any organization acting as payer that is a subsidiary, affiliate or business owned or controlled by a payer that, during a given calendar year, pays health care providers for health care services.

f. "Insurer" means a private health insurance company that offers any of the following: commercial insurance administration for self-insured employers, Medicare managed care products, Medicaid and CHIP, or Medicaid managed care organization (MCO) products.

g. "Market" means the highest level of categorization of the health insurance market and shall include individual, small group, large group, self-insured, student, and Medicare Advantage markets.

HD : NSW : MAW : 2141510681
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Released: 06/23/2022 03:42 PM

(h) Public Programs" means Payers that are not Insurers and includes Medicare, Medicaid and CHIP, the Veterans Health Administration (VHA), and other similar programs or entities.

i. "Subcommittee" means the DEFAC Health Care Spending Benchmark Subcommittee.

(2) The Subcommittee shall be responsible for setting the Spending Benchmark and shall advise DEFAC, the Governor, the Department of Insurance, State Employee Benefits Committee, the Delaware Division of Medicaid and Medical Assistance, and other relevant state agencies on the Spending Benchmark.

(3) Subject to paragraph (k)(5), the Spending Benchmark shall be the per capita Potential Gross State Product (PGSP) growth rate which shall be calculated as follows:

a. The sum of the following: the expected growth in national labor force productivity; plus, the expected growth in Delaware's civilian labor force; plus, the expected national inflation;

b. Minus Delaware's expected population growth.

(4) The methodology used to determine the Spending Benchmark in paragraph (k)(4) are subject to change if the Subcommittee determines that there is a more effective or precise methodology than paragraph (k)(4) .

(5) The Commission shall annually publish the Delaware Health Care Spending and Quality Benchmarks Implementation Manual on the Commission's website which shall contain the current definitions and metrics utilized in the Spending and Quality Benchmark calculations.

(6) In calculating any statewide, regional or local health care cost calculation target or benchmark, the total cost of care calculation, report, study or formulation may utilize data obtained from the Health Care Claims Database maintained by the Delaware Health Information Network.

(7) The Subcommittee shall do all of the following:

a. Review annually all components of the Potential Gross State Product or any other approved methodology, and recommend to DEFAC for its approval whether the forecasted growth rate has changed in such a material way that it warrants a change in the Spending Benchmark, and if so, how and why the Spending Benchmark should be modified.

b. Review periodically the methodology of the Spending Benchmark for possible updates or modifications to the methodology for the performance year starting January 1, 2024, and each year thereafter, and make recommendations to DEFAC by no later than May 31 of each calendar year thereafter, as to whether, and, if so, how and why the Spending Benchmark methodology and/or the growth rate should change.

c. In the event a recommendation is made that the Spending Benchmark methodology and/or the growth rate should change, provide the public and interested stakeholders a reasonable opportunity to provide feedback on the proposed changes, and consider any recommendations provided as to the proposed changes.

d. Advise the Governor and DEFAC on current and projected trends in health care and the health care industry, particularly as they affect the expenditures and revenues of the State of Delaware, its citizens, and its major industries.

(8) No later than June 30th of each year, DEFAC shall report to the Governor and the Commission regarding any changes to the Spending Benchmark as approved by DEFAC.

(9) The Commission shall establish and publish the annual Spending Benchmark on the Commission's website.

(10) Recognizing the importance of coordination between the Subcommittee and the Commission in the creation of the Spending and Quality Benchmarks, and as part of the Commission's ongoing efforts to serve as the policy body to advise the Governor and the General Assembly on strategies to promote affordable quality health care to all Delawareans, the Commission shall be responsible for doing all of the following:

a. Setting Quality Benchmarks for the State of Delaware and advising the Governor, the Division of Public Health and other relevant state agencies on the Quality Benchmarks.

b. For each new, three-year cycle of the Quality Benchmarks, reviewing the methodology used to establish these benchmarks to determine whether changes should be made to the values used to establish the Quality Benchmarks to reflect changes in new population health or health care priority opportunities for improvement, and/or whether the Quality Benchmarks' values should be changed to reflect improved health care performance in the State. If changes are to be made to the values used to establish the Quality Benchmarks and/or the Quality Benchmarks, the Commission shall finalize these changes prior to the start of each new, three-year Quality Benchmark cycle. For Calendar Year 2025–2028 of the Quality Benchmark cycle, the Commission should finalize any changes on or before December 31, 2024, and then every three years thereafter.

c. In the event the Commission determines that the values used to establish the Quality Benchmarks and/or the Quality Benchmarks should be changed, the Commission shall make such changes only after providing the public and interested stakeholders a reasonable opportunity to provide feedback on the proposed changes, and considering any recommendations provided as to the proposed changes.

d. Engaging health care providers and community partners in a regular and ongoing forum, with the State and with each other, to develop strategies to reduce variation in cost and quality and to help the State perform well

relative to the Spending and Quality Benchmarks, including reliance on data and, to the extent practicable, evidence-based solutions to address identified opportunities through the variation analysis.

e. Producing timely publications and/or reports with validated data to ensure transparency regarding health care spending and quality within the State of Delaware.

(11) Subject to subsections (k)(13)(d) and (e) of this section, Payers, Insurers, and Public Programs shall report annually to the Commission by no later than October 1 of each calendar year on performance relative to the Spending and Quality Benchmarks.

a. Spending Benchmark data may consist of the prior two calendar years.

b. Quality Benchmark data shall consist of the previous calendar year.

c. The Commission may use other sources to track variation in costs and quality of high-volume, high-cost and high-value episodes of care (identifying the causes of variation, including mix of services used, unit price variation and provision of low-value care) at both of the following:

1. State health insurance Market and individual consumer levels.

2. Medical group and accountable care organization (ACO) levels for entities of a sufficient size, using clinical risk adjustment methodologies.

d. Other Payers may be required to report annually to the Commission on performance relative to the Spending and Quality Benchmarks subject to the approval of DEFAC, the Subcommittee, the Governor, and other relevant state agencies.

e. The above annual reporting deadline of October 1 of each calendar year may be modified by the Executive Director of the Commission provided that Payers, Insurers, and Public Programs are given written notice of any such modification at least 30 days prior to the annual reporting deadline.