

CHAPTER 71**(HB 44)**

AN ACT relating to health data collection.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 216.2923 is amended to read as follows:

- (1) For the purposes of carrying out the provisions of KRS 216.2920 to 216.2929, the secretary may:
 - (a) Appoint temporary volunteer advisory committees, which may include individuals and representatives of interested public or private entities or organizations;
 - (b) Apply for and accept any funds, property, or services from any person or government agency;
 - (c) Make agreements with a grantor of funds or services, including an agreement to make any study allowed or required under KRS 216.2920 to 216.2929; and
 - (d) Contract with a qualified, independent third party for any service necessary to carry out the provisions of KRS 216.2920 to 216.2929; however, unless permission is granted specifically by the secretary a third party hired by the secretary shall not release, publish, or otherwise use any information to which the third party has access under its contract.
- (2) For the purposes of carrying out the provisions of KRS 216.2920 to 216.2929, the secretary shall:
 - (a) Publish and make available information that relates to the health care financing and delivery system, ***information on charges for health care services and the quality and outcomes of health care services***, the cost of workers' compensation health benefits, motor vehicle health insurance benefits, and health insurance premiums and benefits that is in the public interest;
 - (b) Periodically participate in or conduct analyses and studies that relate to:
 1. Health-care costs;
 2. Health-care quality and outcomes;
 3. Health-care providers and health services; and
 4. Health insurance costs;
 - (c) Promulgate administrative regulations pursuant to KRS Chapter 13A that relate to its meetings, minutes, and transactions related to KRS 216.2920 to 216.2929;
 - (d) Prepare annually a budget proposal that includes the estimated income and proposed expenditures for the administration and operation of KRS 216.2920 to 216.2929; and
 - (e) No later than thirty (30) days after July 15, 2005, appoint and convene a permanent cabinet advisory committee. The committee shall advise the secretary on the collection, analysis, and distribution of consumer-oriented information related to the health care system, the cost of treatment and procedures, outcomes and quality indicators, and policies and regulations to implement the electronic collection and transmission of patient information (e-health) and other cost-saving patient record systems. At a minimum, the committee shall be composed of the following:
 1. Commissioner of the Department for Public Health;
 2. Commissioner of the Department for Mental Health and Mental Retardation Services;
 3. Commissioner of the Department for Medicaid Services;
 4. Executive director of the Office of Insurance;
 5. Physician representatives;
 6. Hospital representatives;
 7. Health insurer representatives;
 8. Consumers; and

9. Nonphysician health care providers.
- (f) The cabinet advisory committee shall utilize the Health Services Data Advisory Committee as a subcommittee, which shall include a member of the Division of Women's Physical and Mental Health, to define quality outcome measurements and to advise the cabinet on technical matters, including *a review of administrative regulations promulgated pursuant to KRS Chapter 13A*, proper interpretation of the data, and the *most cost-efficient* manner in which it should be published and disseminated to the public, state and local leaders in health policy, health facilities, and health-care providers. *The Health Services Data Advisory Committee shall review and make recommendations to the cabinet advisory committee regarding exploration of technical matters related to data from other health care providers and shall make recommendations on methods for risk-adjusting any data prepared and published by the cabinet.*
- (3) The cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A that impose civil fines not to exceed five hundred dollars (\$500) for each violation for knowingly failing to file a report as required under KRS 216.2920 to 216.2929. The amount of any fine imposed shall not be included in the allowed costs of a facility for Medicare or Medicaid reimbursement.

➔Section 2. KRS 216.2925 is amended to read as follows:

- (1) The Cabinet for Health and Family Services shall establish by promulgation of administrative regulations pursuant to KRS Chapter 13A, no later than January 1, 1995, those data elements required to be submitted to the cabinet by all licensed hospitals and ambulatory facilities, including a timetable for submission and acceptable data forms. Thereafter, every hospital and ambulatory facility shall be required to report *on a quarterly basis* ~~on a periodic basis, which may include quarterly reporting,~~ information regarding the charge for and quality of the procedures and health-care services performed therein, and as stipulated by administrative regulations promulgated pursuant to KRS Chapter 13A. The cabinet shall accept data which, at the option of the provider is submitted through a third party, including, but not limited to, organizations involved in the processing of claims for payment, so long as the data elements conform to the requirements established by the cabinet. The cabinet may conduct statistical surveys of a sample of hospitals, ambulatory facilities, or other providers in lieu of requiring the submission of information by all hospitals, ambulatory facilities, or providers. On at least a biennial basis, the cabinet shall conduct a statistical survey that addresses the status of women's health, specifically including data on patient age, ethnicity, geographic region, and payor sources. The cabinet shall rely on data from readily available reports and statistics whenever possible.
- (2) The cabinet shall require for submission to the cabinet by any group of providers, except for physicians providing services or dispensaries, first aid stations, or clinics located within business or industrial establishments maintained solely for the use of their employees, including those categories within the definition of provider contained in KRS 216.2920 and any further categories determined by the cabinet, at the beginning of each fiscal year after January 1, 1995, and within the limits of the state, federal, and other funds made available to the cabinet for that year, and as provided by cabinet promulgation of administrative regulations pursuant to KRS Chapter 13A, the following:
- (a) A list of medical conditions, health services, and procedures for which *data on* charge, ~~and~~ quality, *and outcome* ~~data~~ shall be collected and published ~~at specified time intervals and in a specified manner~~;
- (b) A timetable for filing ~~data, which may include quarterly reporting of the~~ information provided for under paragraph (a) of this subsection *on a quarterly basis*;
- (c) A list of data elements that are necessary to enable the cabinet to analyze and disseminate risk-adjusted charge, quality, and outcome information, including mortality and morbidity data;
- (d) An acceptable format for data submission which shall include use of the uniform:
- I.* Health claim form pursuant to KRS 304.14-135 or any other universal health claim form to be determined by the cabinet *if* ~~and which may be in the form of magnetic computer tape, computer diskettes, or other electronic media, or through an electronic network, or~~ in the form of hard copy; *or*

2. ***Electronic submission formats as required under the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. sec. 300gg et seq., in the form of magnetic computer tape, computer diskettes, or other electronic media through an electronic network;***

- (e) Procedures to allow health-care providers at least thirty (30) days to review information generated from any data required to be submitted by them, with any reports generated by the cabinet to reflect valid corrections by the provider before the information is released to the public; and
 - (f) Procedures pertaining to the confidentiality of data collected.
- (3) The cabinet shall coordinate ***but not duplicate*** its data-gathering activities with other data-collection activities conducted by the Office of Insurance, as well as other state ***and national*** agencies which collect health-related service, utilization, ***quality, outcome***, financial, and health-care personnel data, and shall review all administrative regulations promulgated pursuant to KRS 216.2920 to 216.2929 to prevent duplicate filing requirements. The cabinet shall periodically review the use of all data collected under KRS 216.2920 to 216.2929 to assure its use is consistent with legislative intent.
 - (4) The cabinet shall conduct outcome analyses and effectiveness studies and prepare other reports pertaining to issues involving health-care charges and quality.
 - (5) The cabinet may independently audit any data required to be submitted by providers as needed to corroborate the accuracy of the submitted data. Any audit may be at the expense of the cabinet and shall, to the extent practicable, be coordinated with other audits performed by state agencies.
 - (6) The cabinet may initiate activities set forth in subsection (1) or (2) of this section at any time after July 15, 1996.
 - (7) The Cabinet for Health and Family Services shall collect all data elements under this section using only the uniform health insurance claim form pursuant to KRS 304.14-135, ***the Professional 837 (ASC XI2N 837) format, the Institutional 837 (ASC XI2N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services.***

➔Section 3. KRS 216.2927 is amended to read as follows:

- (1) The following types of data shall be deemed as relating to personal privacy and, except by court order, shall not be published or otherwise released by the cabinet or its staff and shall not be subject to inspection under KRS 61.870 to 61.884:
 - (a) Any data, summary of data, correspondence, or notes that identify or could be used to identify any individual patient or member of the general public, unless the identified individual gives written permission to release the data or correspondence;
 - (b) Any correspondence or related notes from or to any employee or employees of a provider if the correspondence or notes identify or could be used to identify any individual employee of a provider, unless the corresponding persons grant permission to release the correspondence; and
 - (c) Data considered by the cabinet to be incomplete, preliminary, substantially in error, or not representative, the release of which could produce misleading information.
- (2) Health care providers submitting required data to the cabinet shall not be required to obtain individual permission to release the data, except as specified in subsection (1) of this section, and, if submission of the data to the cabinet complies with pertinent administrative regulations promulgated pursuant to KRS Chapter 13A, shall not be deemed as having violated any statute or administrative regulation protecting individual privacy.
- (3) No less than sixty (60) days after the annual report or reports are published and except as otherwise provided, the cabinet shall make all aggregate data which does not allow disclosure of the identity of any individual patient, and which was obtained for the annual period covered by the reports, available to the public.
 - (a) ***Persons or organizations requesting use of the data shall agree to abide by a public-use data agreement and by HIPPA privacy rules referenced in 45 C.F.R. Part 164. The public-use data agreement shall include at a minimum a prohibition against the sale or further release of data, and guidelines for the use and analysis of the data released to the public related to provider quality, outcomes, or charges;***

(b) ~~{The aggregate data shall be made available in both printed format and in a standard electronic format which is readable by commonly available software for personal computers.}~~ Single copies of the printed data shall be made available to individuals at no cost. The cabinet may impose a fee ~~{no greater than that necessary to cover its costs}~~ for providing electronic or multiple printed copies of the data. At least one (1) printed and one (1) electronic copy of the aggregate data shall be provided without charge to the Legislative Research Commission; *and*

(c) *The Health Services Data Advisory Committee shall review at least annually current protocols related to the release of data under this subsection and shall make recommendations to the cabinet advisory committee established under KRS 216.2923.*

- (4) Collection of data about individual patients shall be in a nonidentifying numeric form and shall not include a patient's name or Social Security number. Any person who receives information identifying a patient through error or any other means shall return all copies of the information immediately.
- (5) All data and information collected shall be kept in a secure location and under lock and key when specifically responsible personnel are absent.
- (6) Only designated cabinet staff shall have access to raw data and information. The designated staff shall be made aware of their responsibilities to maintain confidentiality. Staff with access to raw data and information shall sign a statement indicating that the staff person accepts responsibility to hold that data or identifying information in confidence and is aware of penalties under state or federal law for breach of confidentiality. Data which, because of small sample size, breaches the confidence of individual patients, shall not be released.
- (7) Any employee of the cabinet who violates any provision of this section shall be fined not more than five hundred dollars (\$500) for each violation or be confined in the county jail for not more than six (6) months, or both, and shall be removed and disqualified from office or employment.

➔Section 4. KRS 216.2929 is amended to read as follows:

- (1) The Cabinet for Health and Family Services shall *make available on its Web site information on charges for health care services* at least annually ~~{, on or before July 1, prepare and publish,}~~ in understandable language with sufficient explanation to allow consumers to draw meaningful comparisons *between every* ~~{, a report or reports on health care charges, quality, and outcomes which includes diagnosis specific or procedure specific comparisons for each}~~ hospital and ambulatory facility, differentiated by payor if relevant, and for other provider groups as relevant data becomes available.
 - (a) *Any charge information compiled and reported by the cabinet shall include the median charge and other percentiles to describe the typical charges for all of the patients treated by a provider and the total number of patients represented by all charges, and shall be risk-adjusted according to recommendations of the Health Services Data Advisory Committee.*
 - (b) *The report shall clearly identify the sources of data used in the report and explain limitations of the data and why differences between provider charges may be misleading. Every provider that is specifically identified in any report shall be given thirty (30) days to verify the accuracy of its data prior to public release and shall be afforded the opportunity to submit comments on its data that shall be included on the Web site and as part of any printed report of the data.*
 - (c) *The cabinet shall only provide linkages to organizations that publicly report comparative-charge data for Kentucky providers using data for all patients treated regardless of payor source, which may be adjusted for outliers, is risk-adjusted, and meets the requirements of paragraph (b) of this subsection.*
- (2) *The cabinet shall make information available on its Web site at least annually describing quality and outcome measures in understandable language with sufficient explanations to allow consumers to draw meaningful comparison between every hospital and ambulatory facility in the Commonwealth and other provider groups as relevant data becomes available.*
 - (a)
 1. *The cabinet shall utilize only national quality indicators that have been endorsed and adopted by the Agency for Healthcare Research and Quality, the National Quality Forum, or the Centers for Medicare and Medicaid Services; or*
 2. *The cabinet shall provide linkages only to the following organizations that publicly report quality and outcome measures on Kentucky providers:*

- a. *The Centers for Medicare and Medicaid Services;*
 - b. *The Agency for Healthcare Research and Quality;*
 - c. *The Joint Commission on the Accreditation of Health Care Organizations; and*
 - d. *Other organizations that publicly report relevant outcome data for Kentucky providers as determined by the Health Services Data Advisory Committee.*
- (b) *The cabinet shall utilize or refer the general public to only those nationally endorsed quality indicators that are based upon current scientific evidence or relevant national professional consensus and have definitions and calculation methods openly available to the general public at no charge.*
- (3) *Any report the cabinet disseminates or refers the public to shall:*
- (a) *Not include data for a provider whose caseload of patients is insufficient to make the data a reliable indicator of the provider's performance;*
 - (b) *Meet the requirements of paragraph (b) of subsection (1) of this section;*
 - (c) *Clearly identify the sources of data used in the report and explain the analytical methods used in preparing the data included in the report; and*
 - (d) *Explain any limitations of the data and how the data should be used by consumers.*
- (4) The cabinet shall at least annually, on or before October 1, submit ~~to the Interim Joint Committees on Appropriations and Revenue and Health and Welfare and to the Governor~~ a report on the operations and activities of the cabinet under KRS 216.2920 to 216.2929 during the preceding fiscal year, including a copy of each study or report required or authorized under KRS 216.2920 to 216.2929 and any recommendations relating thereto.
- (5)~~(3)~~ The cabinet shall report at least biennially, no later than October 1 of each odd-numbered year, ~~to the Interim Joint Committees on Appropriations and Revenue and on Health and Welfare and to the Governor~~ on matters pertaining to comparative health-care charges, quality, and outcomes, the effectiveness of its activities relating to educating consumers and containing health-care costs, and any recommendations regarding its data collection and dissemination activities.
- (6)~~(4)~~ The cabinet shall report at least biennially, no later than October 1 of each odd-numbered year, on the special health needs of the minority population in the Commonwealth as compared to the population in the Commonwealth as compared to the population at large. The report shall ~~be transmitted to the Interim Joint Committees on Appropriations and Revenue and Health and Welfare and to the Governor and shall~~ contain an overview of the health status of minority Kentuckians, shall identify the diseases and conditions experienced at disproportionate mortality and morbidity rates within the minority population, and shall make recommendations to meet the identified health needs of the minority population.
- (7) *The reports required under subsections (4), (5), and (6) of this section shall be submitted to the Interim Joint Committees on Appropriations and Revenue and Health and Welfare and to the Governor.*

➔Section 5. KRS 205.623 is amended to read as follows:

- (1) All *health insurers and administrators as defined* ~~insurance companies licensed~~ under KRS Chapter 304 shall provide upon request to the *Department for Medicaid* ~~Cabinet for Health and Family~~ Services, by electronic means and in the format prescribed by the *department* ~~cabinet~~, *policy and* coverage information and claims paid data on Medicaid-eligible policyholders and dependents. *Any request from the department shall include a list of data elements that shall be included on the electronic file from the insurer or administrator* ~~The data obtained on Medicaid eligibles shall be used by the cabinet to determine the availability of other medical benefits in order to ascertain Medicaid is the payor of last resort~~.
- (2) *All health insurers and administrators as defined under KRS Chapter 304 shall provide upon request to the department, by electronic means and in the format prescribed by the department, identifying information on all policyholders and dependents to match with the Medicaid management information system to determine which policyholders and dependents also participate in the Kentucky Medical Assistance Program. The identifying information shall include the name, address, date of birth, and Social Security number as these items appear in the companies' files and as the department may require.*

- (3) *No health insurer or administrator shall be required to provide information under this section if doing so would violate any provision of federal law.*
- (4) All information obtained by the *department*~~[cabinet]~~ pursuant to this section shall be confidential and shall not be open for public inspection.
- (5) *The department shall not be charged a fee by a third party for information requested under this section, nor shall the department be charged a fee by a third party for the processing and adjudication of the department's claim for recovery, reclamation, or validation of eligibility.*

➔Section 6. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

It shall be an unfair or deceptive trade practice for any health insurer or administrator as defined under KRS Chapter 304 to refuse to provide information requested by the Department for Medicaid Services under Section 5 of this Act, except when providing the requested information would violate any provision of federal law.

Signed by Governor April 11, 2008.