
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1271 Session of
2010

INTRODUCED BY MCILHINNEY, RAFFERTY, ARGALL, LOGAN, ALLOWAY AND
O'PAKE, MARCH 11, 2010

REFERRED TO BANKING AND INSURANCE, MARCH 11, 2010

AN ACT

1 Imposing restrictions relating to premium rates for small
2 employer group health benefit plans; providing for
3 renewability and availability of coverage; establishing
4 standards to assure fair marketing; providing for powers and
5 duties of the Insurance Commissioner; and repealing
6 provisions of the Accident and Health Filing Reform Act.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Pennsylvania
11 Health Care Security Act.

12 Section 2. Purpose.

13 The purpose and intent of this act is to promote the
14 availability of health insurance coverage to small employers
15 regardless of their health status in order to prevent abusive
16 rating practices, to spread health insurance risk more broadly,
17 to establish rules regarding renewability of coverage and to
18 establish limitations on the use of preexisting condition
19 exclusions.

20 Section 3. Definitions.

1 The following words and phrases when used in this act shall
2 have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 "Carrier." A health insurance entity subject to the act of
5 May 17, 1921 (P.L.682, No.284), known as The Insurance Company
6 Law of 1921, insurance laws and regulations of this Commonwealth
7 or subject to the jurisdiction of the Insurance Commissioner
8 that contracts or offers to contract to provide, deliver,
9 arrange for, pay for or reimburse any of the costs of health
10 care services, including a sickness and accident insurance
11 company, a health maintenance organization as defined in the act
12 of December 29, 1972 (P.L.1701, No.364), known as the Health
13 Maintenance Organization Act, a hospital plan corporation as
14 defined in 40 Pa.C.S. Ch. 61 (relating to hospital plan
15 corporations), a professional health service plan corporation as
16 defined in 40 Pa.C.S. Ch. 63 (relating to professional health
17 services plan corporations), a fraternal benefit society
18 organized and operating under Article XXIV of The Insurance
19 Company Law of 1921, or any other entity providing a plan of
20 health insurance, health benefits or health services.

21 "Commissioner." The Insurance Commissioner of the
22 Commonwealth.

23 "Creditable coverage." With respect to an individual, health
24 benefits or coverage provided under any of the following:

- 25 (1) A group health plan.
- 26 (2) A health plan.
- 27 (3) Medicare under Part A or Part B of Title XVIII of
28 the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et
29 seq.).
- 30 (4) Medicaid under Title XIX of the Social Security Act

(49 Stat. 620, 42 U.S.C. § 301 et seq.), other than coverage consisting solely of benefits under section 1928 of that act.

(5) CHAMPUS, under 10 U.S.C. Ch. 55 (relating to medical and dental care), where "uniformed services" means the armed forces and the Commissioned Corps of the National Oceanic and Atmospheric Administration and of the Public Health Services.

(6) A health plan offered under 5 U.S.C. Ch. 89 (relating to Federal employees group health insurance).

(7) A health insurance program administered by the Insurance Department.

"Department." The Insurance Department of the Commonwealth.

"Dependent." Subject to applicable terms of a health benefits plan:

(1) the spouse of an eligible employee; or

(2) an unmarried child who is under 19 years of age of an eligible employee.

"Eligible employee." An employee who works on a full-time basis with a normal work week of 30 or more hours, except that at the employer's sole discretion, the term shall also include an employee who works on a full-time basis with a normal work week of anywhere between at least 17.5 and 30 hours, as long as this eligibility criterion is applied uniformly among all of the employer's employees and without regard to any health status-related factor. The term shall include a self-employed individual, a sole proprietor, a partner of a partnership and an independent contractor if the self-employed individual, sole proprietor, partner or independent contractor is included as an employee under a health benefit plan of a small employer. The term does not include an employee who works on a temporary or substitute basis or who works less than 17.5 hours per week.

1 "Health benefit plan." A hospital or medical expense
2 insurance policy offered by a carrier for medical care delivered
3 or issued for delivery for a subscriber. The term does not
4 include one or more or any combination of the following:

5 (1) Coverage only for accident or disability income
6 insurance or any combination thereof.

7 (2) Coverage issued as a supplement to liability
8 insurance.

9 (3) Liability insurance, including general liability
10 insurance and automobile liability insurance.

11 (4) Stop-loss or excess-risk insurance.

12 (5) Workers' compensation or similar insurance.

13 (6) Automobile medical payment insurance.

14 (7) Credit-only insurance.

15 (8) Other similar insurance coverage as specified in
16 Federal regulations under which benefits for medical care are
17 secondary or incidental to other insurance benefits.

18 The term shall not include Medicare supplemental health
19 insurance as defined under section 1882(g)(1) of the Social
20 Security Act (49 Stat. 620, 42 U.S.C. § 1395ss(g)(1)).

21 "Health status-related." Any of the following factors:

22 (1) Health status.

23 (2) Medical condition, including both physical and
24 mental illness.

25 (3) Substance abuse.

26 (4) Claims experience.

27 (5) Receipt of health care.

28 (6) Medical history.

29 (7) Genetic information.

30 (8) Evidence of insurability, including conditions

arising out of acts of domestic violence.

(9) Disability.

"Modified demographic rating." A rating method used to develop a carrier's premium that spreads financial risk across the carrier's small group population, which results in a small group premium rate that may be modified based on rate class factors such as age, gender, family composition, industry and geographic area. The geographic area for small group policies shall have counties as the smallest permissible rating territory.

"Preexisting condition." A condition, regardless of the cause of the condition, for which medical advice, diagnosis, care or treatment was recommended or received during the six months immediately preceding the enrollment date of coverage.

"Restricted network provision." Any provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier to provide health care services to covered individuals.

"Significant break in coverage." A period of 63 consecutive days during which an individual does not have any creditable coverage, excluding any waiting period or affiliation period.

"Small employer." A person, firm, corporation, partnership or political subdivision that is located in this Commonwealth and is actively engaged in business that on at least 50% of its working days during the preceding calendar quarter, employed a combination of no more than 50 eligible employees and is not formed primarily for the purposes of buying health insurance and in which a bona fide employer-employee relationship exists.

"Small group carrier." A carrier that provides small group

1 health benefit plans.

2 "Small group health benefit plan." A health benefit plan for
3 groups of two to 50 eligible persons, whether issued directly to
4 small employers or made available to small employers through
5 membership in an association.

6 Section 4. Restrictions relating to premium rates.

7 (a) Applicability.--This section shall apply to all small
8 group health benefit plans that are issued, made effective,
9 delivered or renewed in this Commonwealth after the effective
10 date of this section.

11 (b) Premium rates.--

12 (1) An insurer shall establish a geographic average rate
13 for plans and shall file the geographic average rates with
14 the department as required by law. The geographic average
15 rate may not be changed more frequently than once every 12
16 months. An insurer may adjust its geographic average rates
17 for age only.

18 (2) An insurer shall apply the risk adjustment factor
19 under paragraph (1) consistently with respect to all plans
20 subject to this section.

21 (3) An insurer shall not charge a rate that is more than
22 33% above or below the geographic average rate as permitted
23 under paragraph (1). Additional adjustments may be made to
24 reflect the inclusion of additional benefits as specified and
25 differences in family composition.

26 (4) The premium for a small group health benefit plan
27 shall not be adjusted by an insurer more than once each year,
28 except that rates may be changed more frequently to reflect:

29 (i) Changes to the enrollment of the small employer
30 group.

(ii) Changes to a small group health benefit plan that have been requested by the small employer.

(iii) Changes pursuant to a government order or judicial proceeding.

(5) No form of medical underwriting is permitted, including use of any of the following factors:

(i) Medical condition or health status-related factors including both physical and mental illness and the use of group or individual medical questionnaires.

(ii) Claims experience.

(iii) Genetic information.

(iv) Evidence of insurability, including conditions arising out of acts of domestic violence.

(v) Disability.

(c) Base rates.--Rating factors for small group health benefit plans shall produce base rates for identical groups which differ only in the amounts attributable to plan design.

(d) Construction.--For the purposes of this section, a small group health benefit plan that contains a restricted network provision or operates in a limited service area shall not be construed as having similar coverage as a small group health benefit plan that does not contain such a provision.

(e) Filing requirements.--All carriers offering small group health benefit plans shall place on file with the department all small group base rates and modifying factors. Rates for a specific group may not deviate by more than 15% from the rate developed utilizing the filed small group base rates or base rate formulas and modifying factors, unless the specific group rates are placed on file with the department. All filings required by this section shall be made no less than 45 days

1 prior to their effective dates. Filings made under this
2 subsection shall be deemed approved at the expiration of 45 days
3 after filing unless earlier approved or disapproved by the
4 commissioner. The commissioner, by written notice to the
5 insurer, may within the 45-day period extend the period for
6 approval or disapproval for an additional 45 days.

7 (f) Regulations.--The commissioner shall establish
8 regulations to implement the provisions of this section and to
9 assure that rating practices used by small group carriers are
10 consistent with the purposes of this act.

11 Section 5. Renewability of coverage.

12 A small employer's health benefit plan subject to this act
13 shall be renewable with respect to all eligible employees or
14 dependents, at the option of the small employer, except in any
15 of the following cases:

16 (1) The small employer has failed to pay premiums or
17 contributions in accordance with the terms of the small group
18 health benefit plan or the carrier has not received timely
19 premium payments.

20 (2) The small employer has performed an act or practice
21 that constitutes fraud or made an intentional
22 misrepresentation of material fact.

23 (3) Noncompliance by the small employer with the
24 carrier's minimum participation requirements.

25 (4) Noncompliance by the small employer with the
26 carrier's employer contribution requirements.

27 (5) The carrier elects to discontinue offering some or
28 all of its small group health benefit plans delivered or
29 issued for delivery to small employers in this Commonwealth,
30 if the carrier provides notice of the decision to:

1 (i) All affected small employers and covered
2 employees.

3 (ii) The commissioner at least 90 days prior to the
4 nonrenewal of any health benefit plans by the carrier.

5 Section 6. Availability of coverage.

6 (a) General rule.--As a condition of transacting business in
7 this Commonwealth, a small group carrier shall actively offer to
8 small employers all health benefit plans that it actively
9 markets to small groups.

10 (b) Small groups.--A small group health benefit plan shall
11 not deny, exclude or limit benefits for a covered individual for
12 losses incurred more than 12 months following the enrollment day
13 of the individual's coverage due to a preexisting condition or
14 the first date of the waiting period for enrollment if that date
15 is earlier than the enrollment date.

16 Section 7. Standards to assure fair marketing.

17 (a) General rule.--A small group carrier shall actively
18 market all small group health benefit plans sold by the carrier
19 to eligible small employers in this Commonwealth.

20 (b) Prohibited conduct.--Except as provided in subsection
21 (c), no small group carrier or producer shall, directly or
22 indirectly, engage in the following conduct:

23 (1) Encouraging or directing a group of small employers
24 to refrain from filing an application for coverage with the
25 small group carrier or producer because of any health status
26 factor, industry, occupation or geographic location of a
27 small employer.

28 (2) Encouraging or directing a small employer to seek
29 coverage from another carrier because of any health status
30 factor, industry, occupation or geographic location of the

1 small employer.

2 (c) Exception.--The provisions of subsection (b) shall not
3 apply with respect to information provided by a carrier or
4 producer to a small employer regarding the established
5 geographic service area or a restricted network provision of a
6 carrier.

7 (d) Entrance into contracts.--No small group carrier shall,
8 directly or indirectly, enter into any contract, agreement or
9 arrangement with a producer that provides for or results in the
10 compensation paid to a producer for the sale of a small group
11 health benefit plan to be varied because of any initial or
12 renewal health status-related factor, industry or occupation of
13 the small employer.

14 (e) Termination of contracts.--No small group carrier may
15 terminate, fail to renew or limit its contract or agreement of
16 representation with a producer for any reason related to any
17 initial or renewal health status-related factor or occupation of
18 the small employer carrier.

19 (f) Separation or exclusion from coverage or benefits.--A
20 small group carrier or producer may not induce or otherwise
21 encourage a small employer to separate or otherwise exclude an
22 employee or dependent from health coverage or benefits provided
23 in connection with the employee's employment.

24 Section 8. Filing of certification.

25 Each small group carrier shall file with the commissioner on
26 or before March 1 of each year an actuarial certification that
27 the carrier is in compliance with this act and that the rating
28 methods of the carrier are actuarially sound. A copy of the
29 certification shall be retained by the carrier at its principal
30 place of business.

1 Section 9. Transition period.

2 The commissioner may establish a phase-in period for renewal
3 rates of no less than one year and no more than two years in
4 duration for carriers to implement rate adjustments. Any
5 transition period shall be applied uniformly to all carriers.

6 Section 10. Repeals.

7 Repeals are as follows:

8 (1) The General Assembly finds that the repeals under
9 paragraph (2) are necessary to effectuate this act.

10 (2) The following provisions of the act of December 18,
11 1996 (P.L.1066, No.159), known as the Accident and Health
12 Filing Reform Act, are repealed insofar as they provide for
13 required rate filings, review procedures and related matters
14 for small group health benefit plans or are otherwise
15 inconsistent with the requirements of this act:

16 (i) Section 3(e)(1), (2), (3), (4), (5) and (6) and
17 (f).

18 (ii) Section 4(a), (b), (c), (d), (e) and (f).

19 (iii) Section 5.

20 (iv) Section 6.

21 (v) Section 7.

22 (vi) Section 8(a), (c) and (e).

23 Section 11. Effective date.

24 This act shall take effect in 180 days.