

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1964 Session of 2014

INTRODUCED BY DeLUCA, GIBBONS, LONGIETTI, COHEN, CALTAGIRONE,  
MUNDY, BROWNLEE, THOMAS, MIRABITO, MOLCHANY, YOUNGBLOOD,  
KOTIK, MILLARD, FRANKEL, READSHAW, MCNEILL, RAVENSTAHL,  
DERMODY, DEASY, MARKOSEK AND MAHONEY, JANUARY 30, 2014

REFERRED TO COMMITTEE ON INSURANCE, JANUARY 30, 2014

AN ACT

1 Amending Title 40 (Insurance) of the Pennsylvania Consolidated  
2 Statutes, in hospital plan corporations, further providing  
3 for rates and contracts; providing for health systems, for  
4 maintenance of contractual obligations with health insurance  
5 carriers and for continuity of care; and imposing duties on  
6 the Insurance Department and Insurance Commissioner.

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

9 Section 1. Section 6124(c) of Title 40 of the Pennsylvania  
10 Consolidated Statutes is amended to read:

11 § 6124. Rates and contracts.

12 \* \* \*

13 (c) [Maintenance of contractual relationships.--

14 (1) Declaration of necessity.--It is hereby found that  
15 many subscribers to nonprofit hospital plans make payments  
16 over long periods of time prior to becoming entitled to  
17 benefits under such a plan and that it is important in the  
18 public interest that the reasonable expectations of such  
19 subscribers as to coverage should be fulfilled if possible.

1 It is hereby declared to be essential for the maintenance of  
2 the health of the residents of this Commonwealth that  
3 subscribers to nonprofit hospital plans be assured receipt of  
4 the hospitalization and related health benefits prepaid by  
5 them through payment of the rates approved under this chapter  
6 and charged by a hospital plan corporation and that to  
7 accomplish this essential purpose termination of contracts  
8 between hospital plan corporations and hospitals entered into  
9 pursuant to section 6121 (relating to eligible hospitals) and  
10 this section be subject to prior approval by the department  
11 as provided in this subsection.

12 (2) Notification period.--No contract between a hospital  
13 plan corporation and any hospital providing for the rendering  
14 of hospitalization to subscribers to the hospital plan shall  
15 be terminated unless the party seeking such termination gives  
16 90 days advance written notice to the other party to the  
17 contract and to the department of the proposed termination.

18 (3) Hearing period.--Whenever a termination subject to  
19 paragraph (2) involves contracts with hospitals having more  
20 than 5% of the beds in the area served by a hospital plan  
21 corporation, the department shall hold public hearings on at  
22 least 15 days notice for the purpose of investigating the  
23 reasons for the termination. Pending completion of said  
24 investigation by the department, termination of the hospital  
25 contracts shall be suspended for a period not to exceed six  
26 months from the expiration of the period provided for in  
27 paragraph (2). All terms and conditions of the contract  
28 between the hospital plan corporation and the hospital or  
29 hospitals shall continue in full force and effect during said  
30 investigation by the department. Based on the record made

1 during the hearings, the department shall make specific  
2 findings as to the facts of the dispute and shall either  
3 approve termination of the contracts or recommend such terms  
4 for continuation of the contract as are in the public  
5 interest, based upon the facts, the right of a hospital to be  
6 paid its costs for hospitalization services to subscribers  
7 and the need of subscribers for efficient, reliable  
8 hospitalization at a reasonable cost.

9 (4) Negotiation period.--If the department recommends  
10 terms for continuation of the contract, the hospital plan  
11 corporation and the hospitals involved shall renew their  
12 negotiations in order to determine whether a new agreement  
13 can be reached substantially on the basis of the terms for  
14 continuation recommended by the department and pending such  
15 negotiations, the termination of the hospital contracts shall  
16 be suspended for a further period not to exceed 90 days from  
17 the date of the decision of the department. If the hospital  
18 plan corporation and the hospitals are unable to consummate a  
19 new contract within said further period of 90 days, they  
20 shall so advise the department. The department shall in that  
21 event approve termination of the contracts effective at the  
22 end of a further period of 30 days and shall prescribe the  
23 form and extent of notice which the hospital plan corporation  
24 shall use in advising its subscribers that hospitalization in  
25 the hospitals involved is not covered by a contract between  
26 the hospital plan corporation and such hospitals.

27 (5) Retroactivity.--Upon the settlement of any dispute  
28 between a hospital plan corporation and any hospital pursuant  
29 to paragraphs (2) and (4), the terms and conditions of any  
30 new contract shall be retroactive to the date of expiration

of the contract previously in effect between the parties.]

(Reserved).

Section 2. Title 40 is amended by adding an article to read:

ARTICLE C

(RESERVED)

CHAPTER 71

HEALTH SYSTEMS

Subchapter

A. Preliminary Provisions

B. Regulation Generally

SUBCHAPTER A

PRELIMINARY PROVISIONS

Sec.

7101. Definitions.

§ 7101. Definitions.

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

"Health care provider." A person, corporation, facility or institution licensed or otherwise authorized by the Commonwealth to provide health care services, including, but not limited to, a physician, coordinated care organization, hospital, health care facility, dentist, nurse, optometrist, podiatrist, physical therapist, psychologist, chiropractor or pharmacist and an officer, employee or agent of the person acting in the course and scope of employment or agency related to health care services.

"Health care service." The term includes:

(1) hospitalization; and

(2) care or treatment rendered by an individual who is

1 employed by a hospital or a physician practice owned by a  
2 hospital.

3 "Health insurance carrier." An entity that offers or issues  
4 a health insurance plan and is subject to any of the following:

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

7 (2) the act of December 29, 1972 (P.L.1701, No.364),  
8 known as the Health Maintenance Organization Act; or

9 (3) Chapter 61 (relating to hospital plan corporations)  
10 or Chapter 63 (relating to professional health services plan  
11 corporations).

12 "Health insurance plan." A policy, contract, certificate or  
13 agreement offered or issued by a carrier to provide, deliver,  
14 arrange for, pay for or reimburse the costs of health care  
15 services. The term does not include:

16 (1) coverage only for accident or disability income  
17 insurance or a combination thereof;

18 (2) coverage issued as a supplement to liability  
19 insurance;

20 (3) liability insurance, including general liability  
21 insurance and automobile liability insurance;

22 (4) workers' compensation or similar insurance;

23 (5) automobile medical payment insurance;

24 (6) credit-only insurance;

25 (7) coverage for on-site medical clinics; or

26 (8) other similar insurance coverage specified in  
27 Federal regulations issued under the Health Insurance  
28 Portability and Accountability Act of 1996 (Public Law 104-  
29 191, 110 Stat. 1936) under which benefits for medical care  
30 are secondary or incidental to other insurance benefits.

1 "Health system." A network of health care providers that by  
2 ownership, contract or agreement is controlled by a common  
3 entity and consists of:

4 (1) at least one hospital; and

5 (2) at least one other health care provider.

6 "Hospital." An entity that is:

7 (1) licensed as a hospital under the act of July 19,  
8 1979 (P.L.130, No.48), known as the Health Care Facilities  
9 Act; and

10 (2) either of the following:

11 (i) claiming tax exempt status under the act of  
12 November 26, 1997 (P.L.508, No.55), known as the  
13 Institutions of Purely Public Charity Act; or

14 (ii) has received funds under the act of February 9,  
15 1999 (P.L.1, No.1), known as the Capital Facilities Debt  
16 Enabling Act.

17 SUBCHAPTER B

18 REGULATION GENERALLY

19 Sec.

20 7111. Maintenance of contractual relationships with health  
21 insurance carriers.

22 7112. Continuity of care.

23 § 7111. Maintenance of contractual relationships with health  
24 insurance carriers.

25 (a) Findings.--It is found that:

26 (1) many subscribers to health insurance plans make  
27 payments over long periods of time prior to becoming entitled  
28 to benefits under the plans; and

29 (2) it is in the public interest that the reasonable  
30 expectations of the subscribers as to coverage should be

1 fulfilled if possible.

2 (b) Declarations.--It is declared to be essential for the  
3 maintenance of the health of the residents of this Commonwealth  
4 that:

5 (1) subscribers to a health insurance plan be assured  
6 receipt of health care services prepaid by them through  
7 payment of premiums charged by hospital insurers; and

8 (2) to accomplish this essential purpose termination or  
9 expiration without renewal of a contract between a health  
10 insurance carrier and health system be subject to prior  
11 approval by the department as provided in this section.

12 (c) Notification period.--A contract between a health  
13 insurance carrier and health system providing for the rendering  
14 of a health care service to a subscriber to the health insurance  
15 plan may not be terminated or left to expire by the health  
16 system unless the health system seeking the termination or  
17 expiration gives 90 days' advance written notice to:

18 (1) the health insurance carrier that is party to the  
19 contract; and

20 (2) the department of the proposed termination or  
21 expiration.

22 (d) Penalty.--The failure by a health system to provide the  
23 written notice under subsection (c) to a health insurance  
24 carrier or the department shall result in the automatic renewal  
25 of the contract on the existing terms and conditions in force  
26 under the terms of the contract for a period of one year  
27 following the proposed termination date or the date of  
28 expiration, unless the health insurance carrier declines to be a  
29 party to the renewed contract.

30 (e) Investigation period.--Whenever a termination or

expiration subject to subsection (c) involves a contract with a health system having more than 5% of the beds in an area served by a health insurance carrier, the department, in conjunction with the Department of Health, shall hold a public hearing after providing at least 15 days' notice to each party to the contract. The hearing shall investigate the reasons for the termination or the refusal to renew and the effects the termination or refusal to renew would cause on the public health of the area served by the health insurance carrier.

(f) Suspension.--The termination or expiration of the health care service contracts shall be suspended for a period not to exceed six months from the termination or expiration of the period provided under subsection (c), pending completion of the investigation by the department.

(g) Contracts.--The terms and conditions of a contract between the health insurance carrier and health system shall continue in full force and effect during the investigation by the department.

(h) Duties of department.--Based on the record made during the hearings, the department shall make specific findings as to the facts of the dispute and shall approve the termination of the contract, permit the contract to expire or recommend the terms for continuation of the contract as are in the public interest, based upon:

(1) the facts;

(2) the right of a health system to be paid its costs for health care services to subscribers; and

(3) the need of subscribers for efficient, reliable health care services at a reasonable cost.

(i) Negotiation period.--The following apply:



1       (1) If the department recommends terms for continuation  
2 of the contract, the parties to the contract shall renew  
3 negotiations in order to determine whether a new agreement  
4 may be reached substantially on the basis of the terms for  
5 continuation recommended by the department.

6       (2) If a new agreement is reached, the terms and  
7 conditions of the new contract shall be retroactive to the  
8 date of the termination or expiration of the contract  
9 previously in effect between the parties. If an agreement is  
10 not reached after a period of 30 days, the parties shall  
11 notify the Insurance Commissioner. Within 15 days of  
12 receiving the notification, the Insurance Commissioner shall  
13 issue an order requiring the parties to submit to mediation  
14 conducted in accordance with subsection (j).

15       (3) Termination or expiration of the health care service  
16 contracts is suspended pending completion of the negotiation  
17 period under this subsection. The terms and conditions of the  
18 contract between the health insurance carrier and health  
19 system shall continue in full force and effect during the  
20 negotiation period.

21 (j) Mediation period.--The following apply:

22       (1) Within 15 days of receipt of the notice under  
23 subsection (i), the Insurance Commissioner shall appoint an  
24 independent mediator who is familiar with health care  
25 delivery, provider reimbursement and health insurance to  
26 conduct mediation between the parties to the contract. The  
27 department shall provide staff and administrative support to  
28 the mediator as necessary for the mediator to carry out the  
29 mediation responsibilities under this subsection. The  
30 mediator may engage experts to assist the mediator. The cost

1 of an expert engaged by the mediator shall be paid equally by  
2 the parties to the mediation. The mediator may charge the  
3 costs to either of the parties at the conclusion of the  
4 mediation, if the mediator determines the charging of costs  
5 is appropriate. The mediation shall not be subject to the act  
6 of February 14, 2008 (P.L.6, No.3), known as the Right-to-  
7 Know Law, or to 65 Pa.C.S. Ch. 7 (relating to open meetings).

8 (2) If a new agreement is reached, the terms and  
9 conditions of the new contract shall be retroactive to the  
10 date of the termination or expiration of the contract  
11 previously in effect between the parties. If, after a period  
12 of 30 days, an agreement is not reached, the parties shall  
13 notify the Secretary of Health and the Insurance Commissioner  
14 that an agreement has not been reached by the parties. Upon  
15 receiving the notice, if the secretary determines that  
16 termination of the contract or permitting the contract to  
17 expire would substantially disrupt the delivery of health  
18 care services in the area served by the health insurance  
19 carrier and that the continuation of the contract is in the  
20 public interest, the secretary shall notify the Insurance  
21 Commissioner and request the department implement binding  
22 arbitration under subsection (k).

23 (3) Termination or expiration of the health care service  
24 contracts is suspended pending completion of the mediation  
25 period under this subsection. The terms and conditions of the  
26 contract between the health insurance carrier and health  
27 system shall continue in full force and effect during the  
28 mediation period.

29 (k) Fact finding period.--The following apply:

30 (1) Within 15 days of receipt of the notice from the

1 Secretary of Health under subsection (j), the Insurance  
2 Commissioner shall issue an order requiring the parties  
3 submit to binding arbitration conducted by the department.  
4 The order shall appoint the mediator under subsection (j) as  
5 the finder of fact.

6 (2) The finder of fact may:

7 (i) direct the production of information or data not  
8 otherwise privileged or made confidential by law from a  
9 party to the arbitration.

10 (ii) establish rules of confidentiality, exchange  
11 and verification of information and other procedures to  
12 ensure fairness of the process for the parties and to  
13 protect appropriate trade secret or confidential business  
14 information.

15 (3) The finding of fact shall not be subject to the  
16 Right-to-Know Law or to 65 Pa.C.S. Ch. 7.

17 (4) A hearing shall commence within 20 days after  
18 appointment of the finder of fact and may not exceed two days  
19 of presentation and testimony by each party.

20 (5) The finder of fact shall report the findings to the  
21 Insurance Commissioner within five days of the conclusion of  
22 the presentations and testimony to the finder of fact.

23 (6) With respect to a presentation and testimony to the  
24 finder of fact, a party shall bear its own costs.

25 (1) Arbitration period.--The following apply:

26 (1) Within 15 days of receipt of the report under  
27 subsection (k), the Insurance Commissioner shall issue an  
28 order imposing contract terms on the health insurance carrier  
29 and health system or extending a contract existing between  
30 the health insurance carrier and health system for a period

1 no longer than 18 months. The order shall be a determination  
2 of public policy and public interest and shall not be  
3 considered an adjudication under 2 Pa.C.S. Ch. 5 Subch. A  
4 (relating to practice and procedure of Commonwealth agencies)  
5 and Ch. 7 Subch. A (relating to judicial review of  
6 Commonwealth agency action) and shall not be appealable to a  
7 court of law. In reaching the decision, the Insurance  
8 Commissioner shall consider the following:

9 (i) The terms of any current health care service  
10 contract between the parties.

11 (ii) Historic contract reimbursement rates for the  
12 geographic area served by any party to the arbitration,  
13 including weighted average rates of health care providers  
14 in the area for all payers.

15 (iii) Inflation rates.

16 (iv) Average reimbursement rates for similarly  
17 situated health care providers.

18 (v) Costs incurred by health care providers in the  
19 provision of health care services to patients.

20 (vi) Actuarial impacts of any proposed contract or  
21 reimbursement rate on insurance rates.

22 (vii) Whether a health care provider is placed at  
23 risk of providing additional care without additional  
24 compensation.

25 (viii) Expected patient volume under the contract.

26 (ix) Alternative health care providers'  
27 accessibility to individuals.

28 (x) Any other factors as the Insurance Commissioner  
29 deems appropriate.

30 (2) Notwithstanding the provisions of paragraph (1), the

Insurance Commissioner's order may not impose contract terms or conditions on the health insurance carrier and health system that are more favorable to the health insurance carrier than the contract terms or conditions the health system negotiated with other health insurance carriers.

(m) Retroactivity.--Upon the settlement of a dispute between a health insurance carrier and health system under this section, the terms and conditions of the new health care service contract shall be retroactive to the date of expiration or termination of the contract previously in effect between the parties. The provisions of this subsection may not impair or supersede rights that accrue:

(1) to a person who is not a party to the new contract; and

(2) after the expiration or termination of the previous contract and before the new contract takes effect.

§ 7112. Continuity of care.

A health system or health care provider employed by a health system may not refuse to continue treating an existing patient based solely on the health insurance plan of the patient.

Section 3. The addition of 40 Pa.C.S. § 7111 shall apply to a termination or expiration, occurring on or after June 1, 2013, of a contract between a health system and health insurance carrier.

Section 4. This act shall take effect immediately.