

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 710 Session of
1999

INTRODUCED BY MASLAND, L. I. COHEN, YOUNGBLOOD, THOMAS,
ARMSTRONG, BELARDI, STURLA, PESCI, CURRY, CLARK, BARD,
BARRAR, CLYMER, M. COHEN, DeWEESE, FREEMAN, GANNON, GORDNER,
HARHAI, HENNESSEY, HORSEY, JOSEPHS, LAUGHLIN, MAHER,
MANDERINO, MICHLOVIC, ORIE, PLATTS, SAINATO, SEMMEL,
SERAFINI, S. H. SMITH, SOLOBAY, STEELMAN, STERN, SURRA,
E. Z. TAYLOR, TRELLO, VAN HORNE, WALKO AND WILT,
MARCH 2, 1999

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 2, 1999

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for health
3 insurer liability.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 42 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 8313. Health insurer liability.

9 (a) General rule.--Whenever a health insurer fails to
10 conform with accepted standards of medical practice in
11 supervising, managing, approving or providing, in a timely
12 manner or otherwise, any health care service to the extent the
13 health insurer is legally required to do so, the health insurer
14 shall be liable for any personal injury, death or other damages
15 caused by that failure.

1 (b) Causation.--The failure of an enrollee entitled to a
2 health care service, or any other person responsible for acting
3 on the enrollee's behalf, to seek an alternative health care
4 provider for, to pay for or to otherwise obtain the service
5 irrespective of a health insurer's failure under subsection (a)
6 shall not diminish the health insurer's liability for any
7 reason, including, but not limited to, lack of causation,
8 contributory negligence and assumption of the risk.

9 (c) Patient advocacy.--No health insurer may remove a health
10 care provider from its health care plan or refuse to renew a
11 health care provider with its plan because the health care
12 provider advocates a health care service for an enrollee that
13 conforms with accepted standards of medical practice.

14 (d) Indemnification.--No contract between a health insurer
15 and a health care provider may contain any language that
16 purports to transfer to the health care provider, through an
17 indemnification requirement or otherwise:

18 (1) any liability of the health insurer or an employee,
19 agent or independent contractor of the health insurer; or

20 (2) any responsibility to defend or pay for the costs of
21 defending a claim that asserts such a liability.

22 (e) Assignment or delegation.--A health insurer shall remain
23 liable under this section regardless of whether the health
24 insurer assigns or delegates the supervision, management,
25 approval or provision of a health care service to a third party
26 administrator, a utilization review organization, an integrated
27 delivery system or any other person or organization.

28 (f) Health care services covered.--Nothing in this section
29 shall be construed as requiring a health care insurer to
30 approve, supervise, manage or provide any health care service

1 that is not covered by the health care plan applicable to the
2 enrollee.

3 (g) Litigation rights.--No health care insurer shall limit
4 the right of an enrollee to enforce a right or responsibility
5 arising under this section in a court of competent jurisdiction.
6 Nothing in this section shall impair the right of an enrollee,
7 health insurer or health care provider to a trial by jury.

8 (h) Other remedies.--Nothing in this section shall limit any
9 other right, remedy or cause of action that an enrollee may
10 otherwise have under the laws of this Commonwealth.

11 (i) Definitions.--As used in this section, the following
12 words and phrases shall have the meanings given to them in this
13 subsection:

14 "Enrollee." An individual who is enrolled in a health care
15 plan of a health care insurer. The term also includes any
16 dependents of that individual who are covered by the plan.

17 "Health care provider." An individual or entity who is
18 licensed, certified or otherwise regulated to provide health
19 services under the laws of this Commonwealth, including, but not
20 limited to, a physician, dentist, podiatrist, optometrist,
21 psychologist, physical therapist, certified registered nurse
22 practitioner, chiropractor and hospital or other health
23 facility. The term also includes an entity that legally
24 contracts to deliver health care services, including, but not
25 limited to, a professional corporation or partnership, an
26 independent practice association and an integrated delivery
27 system of health care providers.

28 "Health insurer." An entity that provides medical insurance
29 coverage on an expense-incurred, service or prepaid basis. The
30 term includes, but is not limited to, the following:

1 (1) A stock or mutual insurance company subject to the
2 act of May 17, 1921 (P.L.682, No.284), known as The Insurance
3 Company Law of 1921.

4 (2) A risk-bearing preferred provider organization
5 subject to section 630 of The Insurance Company Law of 1921.

6 (3) A health maintenance organization subject to the act
7 of December 29, 1972 (P.L.1701, No.364), known as the Health
8 Maintenance Organization Act.

9 (4) A hospital plan corporation subject to 40 Pa.C.S.
10 Ch. 61 (relating to hospital plan corporations).

11 (5) A professional health service plan corporation
12 subject to 40 Pa.C.S. Ch. 63 (relating to professional health
13 services plan corporations).

14 (6) A fraternal benefit society subject to the act of
15 December 14, 1992 (P.L.835, No.134), known as the Fraternal
16 Benefit Societies Code.

17 (7) A worker's compensation insurer subject to the act
18 of June 2, 1915 (P.L.736, No.338), known as the Workers'
19 Compensation Act.

20 (8) A motor vehicle insurer subject to 75 Pa.C.S. Ch. 17
21 (relating to financial responsibility).

22 (9) Any person subject to a successor act of any of the
23 foregoing.

24 Section 2. This act shall take effect in 60 days.