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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 671 Session of  
2003

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INTRODUCED BY WONDERLING, MOWERY, JUBELIRER, M. WHITE, ERICKSON,  
BOSCOLA, PICCOLA, WOZNIAK, TARTAGLIONE, RHOADES AND  
C. WILLIAMS, APRIL 24, 2003

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REFERRED TO BANKING AND INSURANCE, APRIL 24, 2003

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AN ACT

1 Imposing restrictions relating to premium rates for health  
2 benefit plans; providing for renewability and availability of  
3 coverage; establishing standards to assure fair marketing;  
4 and providing for the powers and duties of the Insurance  
5 Commissioner.

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

8 Section 1. Short title.

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

11 Section 2. Purpose.

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

19 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 act of May 17,  
19      1921 (P.L.682, No.284), known as The Insurance Company Law of  
20      1921, or any other entity providing a plan of health insurance,  
21      health benefits or health services.

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

24      "Community rating." A rating method used to develop a  
25      carrier's premium that spreads financial risk across the  
26      carrier's small group population, which results in a community-  
27      rated premium rate that may be based on a geographic community's  
28      rate experience for small group policies and in which counties  
29      are the smallest permissible rating territory.

30      "Creditable coverage." With respect to an individual, health

benefits or coverage provided under any of the following:

(1) A group health plan.

(2) A health plan.

(3) Medicare under Part A or Part B of Title XVIII of the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.).

(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, 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.

(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

1 individual, a sole proprietor, a partner of a partnership and an  
2 independent contractor if the self-employed individual, sole  
3 proprietor, partner or independent contractor is included as an  
4 employee under a health benefit plan of a small employer. The  
5 term does not include an employee who works on a temporary or  
6 substitute basis or who works less than 17.5 hours per week.

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

11 (1) Coverage only for accident or disability income  
12 insurance or any combination thereof.

13 (2) Coverage issued as a supplement to liability  
14 insurance.

15 (3) Liability insurance, including general liability  
16 insurance and automobile liability insurance.

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

18 (5) Workers' compensation or similar insurance.

19 (6) Automobile medical payment insurance.

20 (7) Credit-only insurance.

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

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

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

28 (1) Health status.

29 (2) Medical condition, including both physical and  
30 mental illness.

- 1           (3) Substance abuse.
- 2           (4) Claims experience.
- 3           (5) Receipt of health care.
- 4           (6) Medical history.
- 5           (7) Genetic information.
- 6           (8) Evidence of insurability, including conditions
- 7           arising out of acts of domestic violence.
- 8           (9) Disability.

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

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

18       "Significant break in coverage." A period of 90 consecutive  
19       days during which an individual does not have any creditable  
20       coverage, excluding any waiting period or affiliation period.

21       "Small employer." A person, firm, corporation, partnership,  
22       association or political subdivision that is located in this  
23       Commonwealth and is actively engaged in business that on at  
24       least 50% of its working days during the preceding calendar  
25       quarter, employed a combination of no more than 100 eligible  
26       employees and part-time employees and is not formed primarily  
27       for the purposes of buying health insurance and in which a bona  
28       fide employer-employee relationship exists.

29       "Small group health benefit plan." A health benefit plan for  
30       groups of two to 100 eligible persons.

1 Section 3. Applicability.

2 This act shall apply to any health benefit plan offered by a  
3 carrier that provides coverage to the employees of a small  
4 employer in this Commonwealth.

5 Section 4. Restrictions relating to premium rates.

6 (a) General rule.--Premium rates for a health benefit plan  
7 subject to this act shall be subject to the following  
8 provisions:

9 (1) A carrier offering health benefit plans to small  
10 employers shall develop a community rate for each health  
11 benefit plan and may only vary the community rate for  
12 geographic area and family composition.

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

15 (i) medical condition or health status-related  
16 factors including both physical and mental illness;

17 (ii) claims experience;

18 (iii) genetic information;

19 (iv) Evidence of insurability, including conditions  
20 arising out of acts of domestic violence; or

21 (v) Disability.

22 (b) Premium adjustment.--The premium for a health benefit  
23 plan may not be adjusted by a carrier more frequently than  
24 annually, except that the rates may be changed to reflect:

25 (1) Changes to the enrollment of the small employer  
26 group.

27 (2) Changes to the health benefit plan requested by a  
28 small employer.

29 (3) Changes to the family composition of employees.

30 (4) Government order or judicial proceeding.

1 (c) Application of rating factors.--Rating factors for  
2 health benefit plans shall produce premiums for identical groups  
3 which differ only in the amounts attributable to plan design and  
4 do not reflect differences due to the nature of the groups  
5 assumed to select particular health benefit plans.

6 (d) Construction.--For the purposes of this section, a  
7 health benefit plan that contains a restricted network provision  
8 shall not be construed as having similar coverage as a health  
9 benefit plan that does not contain such a provision.

10 (e) Regulations.--The commissioner shall establish  
11 regulations to implement the provisions of this section and to  
12 assure that rating practices used by small employer group  
13 carriers are consistent with the purposes of this act.

14 Section 5. Renewability of coverage.

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

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

23 (2) The small employer has performed an act or practice  
24 that constitutes fraud or made an intentional  
25 misrepresentation of material fact.

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

28 (4) Noncompliance by the small employer with the  
29 carrier's employer contribution requirements.

30 (5) The carrier elects to discontinue offering some or

1 all of its health benefit plans delivered or issued for  
2 delivery to small employers in this Commonwealth, if the  
3 carrier provides notice of the decision to:

4 (i) All affected small employers and covered  
5 employees.

6 (ii) The commissioner at least 180 days prior to the  
7 nonrenewal of any health benefit plans by the carrier.

8 Section 6. Availability of coverage.

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

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

19 Section 7. Standards to assure fair marketing.

20 (a) General rule.--A small employer group carrier shall  
21 actively market all health benefit plans sold by the carrier to  
22 eligible small employers in this Commonwealth.

23 (b) Prohibited conduct.--Except as provided in subsection

24 (c), no small employer group carrier or producer shall, directly  
25 or indirectly, engage in the following conduct:

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



1           (2) Encouraging or directing a small employer to seek  
2       coverage from another carrier because of any health status  
3       factor, industry, occupation or geographic location of the  
4       small employer.

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

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

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

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

27       (g) Regulations.--The commissioner may establish regulations  
28       setting forth additional standards to provide for the fair  
29       marketing and broad availability of health benefit plans to  
30       small employers in this Commonwealth.

1 Section 8. Effective date.

2 This act shall take effect January 1, 2004.