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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1358 Session of  
2011

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INTRODUCED BY D. WHITE, COSTA, BROWNE, ORIE, WARD, FONTANA,  
SOLOBAY, BREWSTER, RAFFERTY, PIPPY, ALLOWAY, HUGHES AND  
VANCE, DECEMBER 12, 2011

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REFERRED TO BANKING AND INSURANCE, DECEMBER 12, 2011

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AN ACT

1 Amending Title 40 (Insurance) of the Pennsylvania Consolidated  
2 Statutes, further providing for definitions and for rates and  
3 contracts.

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

6 Section 1. The definition of "nonprofit hospital plan" in  
7 section 6101 of Title 40 of the Pennsylvania Consolidated  
8 Statutes is amended and the section is amended by adding  
9 definitions to read:

10 § 6101. Definitions.

11 The following words and phrases when used in this chapter  
12 shall have, unless the context clearly indicates otherwise, the  
13 meanings given to them in this section:

14 "Health care provider." A person, corporation, facility,  
15 institution or other entity licensed, certified or approved by  
16 the Commonwealth to provide health care or professional medical  
17 services. The term includes, but is not limited to, doctors of  
18 dental surgery, doctors of medicine, doctors of optometry,

1 doctors of osteopathy, doctors of podiatry, doctors of  
2 chiropractic, licensed physical therapists, licensed clinical  
3 social workers, licensed occupational therapists, certified  
4 registered nurse anesthetists, certified registered nurse  
5 practitioners, licensed psychologists, licensed speech language  
6 pathologists, licensed audiologists, other professional nurses,  
7 certified nurse midwives, hospitals, nursing homes, ambulatory  
8 surgical centers or birth centers.

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10 "Hospital-provider contract." An agreement made between a  
11 hospital plan corporation or a professional health service  
12 corporation and a health care provider who is under contract or  
13 otherwise affiliated with a hospital, either directly or  
14 indirectly, to provide related health benefits at the hospital.

15 "Hospital service area." One of the eight areas of this  
16 Commonwealth that is composed of the following counties or as  
17 determined by the Insurance Commissioner and published in the  
18 Pennsylvania Bulletin:

19 (1) Area 1: Erie, Crawford, Mercer, Lawrence, Venango,  
20 Clarion, Forest, Warren, McKean, Elk, Cameron, Clearfield and  
21 Jefferson.

22 (2) Area 2: Potter, Tioga, Bradford, Sullivan, Lycoming,  
23 Clinton, Centre, Union, Snyder, Montour, Columbia and  
24 Northumberland.

25 (3) Area 3: Susquehanna, Wyoming, Wayne, Lackawanna,  
26 Pike, Monroe, Northampton, Lehigh, Carbon and Luzerne.

27 (4) Area 4: Schuylkill, Berks, Bucks, Montgomery,  
28 Chester, Lancaster and Delaware.

29 (5) Area 5: York, Adams, Franklin, Dauphin, Cumberland,  
30 Perry, Lebanon, Juniata, Mifflin, Huntington, Blair, Bedford

1 and Fulton.

2 (6) Area 6: Somerset, Cambria, Indiana, Beaver, Butler,  
3 Armstrong, Westmoreland, Washington, Green and Fayette.

4 (7) Area 7: Philadelphia.

5 (8) Area 8: Allegheny.

6 "Nonprofit hospital plan." A plan whereby for prepayment,  
7 periodical or lump sum payment hospitalization or related health  
8 benefits or the administration of hospitalization or other  
9 health benefits may be provided to subscribers to such plan.

10 "Professional health service corporation." A general medical  
11 service corporation. The term does not include a corporation  
12 that is primarily a nonprofit dental service plan corporation or  
13 a nonprofit optometric service plan corporation.

14 "Termination." Includes any conclusion of a contract,  
15 including the natural conclusion of a contract at the end of a  
16 time period set by the contract.

17 Section 2. Section 6124 of Title 40 is amended to read:

18 § 6124. Rates and contracts.

19 (a) General rule.--The rates charged to subscribers by  
20 hospital plan corporations, all rates of payments to hospitals  
21 made by such corporations pursuant to the contracts provided for  
22 in this chapter, all acquisition costs in connection with the  
23 solicitation of subscribers to such hospital plans, the reserves  
24 to be maintained by such corporations, the certificates issued  
25 by such corporations representing their agreements with  
26 subscribers, and any and all contracts entered into by any such  
27 corporation with any hospital, shall, at all times, be subject  
28 to the prior approval of the department.

29 (b) Procedure.--Every application for such approval shall be  
30 made to the department in writing and shall be subject to the

1 provisions of subsections (c) through (f) of section 6102 of  
2 this title (relating to certification of hospital plan  
3 corporations) except that the department may substitute  
4 publication in the Pennsylvania Bulletin of notice of reasonable  
5 opportunity to submit written comments for publication of  
6 opportunity for hearing in any case where the right to an oral  
7 hearing is not conferred by the Constitution of the United  
8 States or the Constitution of Pennsylvania. Within 60 days after  
9 the filing of the application the department shall approve or  
10 refuse such application.

11 (c) Maintenance of contractual relationships.--

12 (1) Declaration of necessity.--It is hereby found that  
13 many subscribers to nonprofit hospital plans make payments  
14 over long periods of time prior to becoming entitled to  
15 benefits under such a plan and that it is important in the  
16 public interest that the reasonable expectations of such  
17 subscribers as to coverage should be fulfilled if possible.  
18 It is hereby declared to be essential for the maintenance of  
19 the health of the residents of this Commonwealth that  
20 subscribers to nonprofit hospital plans be assured receipt of  
21 the hospitalization and related health benefits prepaid by  
22 them through payment of the rates approved under this chapter  
23 and charged by a hospital plan corporation and that to  
24 accomplish this essential purpose termination of contracts  
25 between hospital plan corporations and hospitals entered into  
26 pursuant to section 6121 (relating to eligible hospitals) and  
27 this section and hospital-provider contracts be subject to  
28 prior approval by the department as provided in this  
29 subsection.

30 (2) Notification period.--No contract between a hospital

1 plan corporation, including any of its affiliates or for-  
2 profit subsidiaries, and any hospital providing for the  
3 rendering of hospitalization to subscribers to the hospital  
4 plan shall be terminated unless the party seeking such  
5 termination gives 90 days advance written notice to the other  
6 party to the contract and to the department of the proposed  
7 termination. No hospital-provider contract shall be  
8 terminated unless the party seeking the termination gives 90  
9 days' advance notice to the other party and the department of  
10 the proposed termination. A hospital plan corporation shall  
11 forward copies of any affected hospital or hospital-provider  
12 contract upon the department's request.

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

1 hearings, the department shall make specific findings as to  
2 the facts of the dispute and shall either approve termination  
3 of the contracts or recommend such terms for continuation of  
4 the contract as are in the public interest, based upon the  
5 facts, the right of a hospital to be paid its costs for  
6 hospitalization services to subscribers and the need of  
7 subscribers for efficient, reliable hospitalization at a  
8 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 and hospital-  
16 provider contracts shall be suspended for a further period  
17 [not to exceed 90 days from the date of the decision of the  
18 department] of up to an additional 24 months as established  
19 by the department. In setting this negotiation period, the  
20 department shall take into consideration the impact of the  
21 termination on consumers, the size of hospital system  
22 involved and number of patients impacted, any social mission  
23 or charitable obligations of the hospital plan corporation or  
24 hospital and the adequacy of the hospital plan corporation's  
25 provider network. If the hospital plan corporation and the  
26 hospitals are unable to consummate a new contract within said  
27 [further period of 90 days] negotiation period, they shall so  
28 advise the department. The department shall in that event  
29 approve termination of the contracts effective at the end of  
30 a further period of [30] 60 days and shall prescribe the form

1 and extent of notice which the hospital plan corporation  
2 shall use in advising its subscribers that hospitalization in  
3 the hospitals and related health benefits provided involved  
4 [is] are not covered by a contract between the hospital plan  
5 corporation and such hospitals. All terms and conditions of  
6 the contracts shall continue in full force and effect during  
7 the periods provided for in this paragraph.

8 (5) Retroactivity.--Upon the settlement of any dispute  
9 between a hospital plan corporation and any hospital pursuant  
10 to paragraphs (2) and (4), the terms and conditions of any  
11 new contract shall be retroactive to the date of expiration  
12 of the contract previously in effect between the parties.

13 (6) Good faith.--The failure of any party to negotiate a  
14 contract in good faith subject to the requirements of this  
15 section shall be deemed a violation of the act of July 22,  
16 1974 (P.L.589, No.205), known as the Unfair Insurance  
17 Practices Act.

18 (d) Expert.--The department may retain, at the parties'  
19 expense, any qualified expert not otherwise a part of the  
20 department's staff to assist it in its review under this  
21 section.

22 Section 3. This act shall take effect in 60 days.