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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1018 Session of  
2007

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INTRODUCED BY MCILHINNEY, MELLOW, RAFFERTY, O'PAKE, WAUGH AND  
ORIE, JUNE 30, 2007

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REFERRED TO BANKING AND INSURANCE, JUNE 30, 2007

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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 individuals and  
15 small employers regardless of their health status in order to  
16 prevent abusive rating practices, to spread health insurance  
17 risk more broadly, to establish rules regarding renewability of  
18 coverage and to establish limitations on the use of preexisting  
19 condition exclusions.

1 Section 3. Definitions.

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

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

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

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

26 (1) A group health plan.

27 (2) A health plan.

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

1           (4) Medicaid under Title XIX of the Social Security Act  
2           (49 Stat. 620, 42 U.S.C. § 301 et seq.), other than coverage  
3           consisting solely of benefits under section 1928 of that act.

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

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

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

12          "Department." The Insurance Department of the Commonwealth.

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

15               (1) the spouse of an eligible employee; or

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

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

1 substitute basis or who works less than 17.5 hours per week.

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

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

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

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

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

13 (5) Workers' compensation or similar insurance.

14 (6) Automobile medical payment insurance.

15 (7) Credit-only insurance.

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

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

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

23 (1) Health status.

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

26 (3) Substance abuse.

27 (4) Claims experience.

28 (5) Receipt of health care.

29 (6) Medical history.

30 (7) Genetic information.

1 (8) Evidence of insurability, including conditions  
2 arising out of acts of domestic violence.

3 (9) Disability.

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

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

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

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

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

1 "Small group carrier." A carrier that provides small group  
2 health benefit plans.

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

7 Section 4. Applicability.

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

11 Section 5. Restrictions relating to premium rates.

12 (a) General rule.--Premium rates for a small group health  
13 benefit plan subject to this act shall be based on modified  
14 demographic rating and shall be subject to the following  
15 provisions:

16 (1) A carrier offering small group health benefit plans  
17 to small employers shall develop a base rate for each small  
18 group health benefit plan and may only modify the base rate  
19 by rate class factors of:

20 (i) geographic area;

21 (ii) industry;

22 (iii) age;

23 (iv) gender; and

24 (v) family composition (coverage type selected by  
25 the eligible employee).

26 (2) Rate adjustment factors used to modify the base rate  
27 will have the following restrictions:

28 (i) age and gender combined, not to exceed plus or  
29 minus 35%; and

30 (ii) industry, not to exceed plus or minus 10%.

(3) 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; or

(v) Disability.

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

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

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

(3) Changes to the family composition of employees.

(4) Government order or judicial proceeding.

(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

1 small group base rates and modifying factors. Rates for a  
2 specific group may not deviate by more than 15% from the rate  
3 developed utilizing the filed small group base rates or base  
4 rate formulas and modifying factors, unless the specific group  
5 rates are placed on file with the department.

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

10 Section 6. Renewability of coverage.

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

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

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

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

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

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

30 (i) All affected small employers and covered



1 employees.

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

4 Section 7. Availability of coverage.

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

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

15 Section 8. Standards to assure fair marketing.

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

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

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

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

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

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

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

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

23 Section 9. Filing of certification.

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

30 Section 10. Transition period.

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

5 Section 11. Repeals.

6 Repeals are as follows:

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

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

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

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

18 (iii) Section 5.

19 (iv) Section 6.

20 (v) Section 7.

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

22 Section 12. Effective date.

23 This act shall take effect in 180 days.