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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1248 Session of  
2014

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INTRODUCED BY VULAKOVICH, COSTA, VANCE, FONTANA, HUGHES,  
KASUNIC, SMITH, SOLOBAY AND WOZNIAK, MARCH 21, 2014

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REFERRED TO BANKING AND INSURANCE, MARCH 21, 2014

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AN ACT

1 Requiring physician practices operating as part of an integrated  
2 delivery network to meet certain requirements to ensure  
3 patient access and consumer choice; and imposing powers and  
4 duties on the Insurance Department.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Patient  
9 Access and Consumer Choice Act.

10 Section 2. Legislative findings.

11 The General Assembly finds and declares as follows:

12 (1) Beginning in the 1990s, a new trend in hospital  
13 mergers and consolidations began and public sources currently  
14 estimate that there have been over 300 such hospital mergers  
15 since 2007.

16 (2) These hospitals consolidate and merge by either  
17 affiliating with other independent hospitals or purchasing  
18 independent physician practices.

19 (3) Hospital and physician consolidation has the

1 potential to increase the cost of health care to consumers by  
2 limiting competition and thereby giving hospitals and  
3 physician practices greater negotiating strength resulting in  
4 higher prices for patients and little incentive to improve  
5 the quality of care delivered.

6 (4) Research conducted by government agencies, academics  
7 and others conclude that increasing provider consolidation  
8 has the potential to increase health care costs.

9 (5) The Commonwealth has a duty to protect consumer  
10 interests.

11 (6) Hospitals and physician practices that also operate  
12 as an integrated delivery network are able to exert  
13 additional market dominance as they can set rates for both  
14 payment and reimbursement.

15 (7) To ensure that physician practices operating as part  
16 of an integrated delivery network are not permitted to use  
17 their market dominance to exert undue pressure on health  
18 insurance providers or to restrict a patient's access,  
19 mandatory contracting requirements must be imposed requiring  
20 that all physician practices operating as part of an  
21 integrated delivery network contract with any willing health  
22 insurance provider.

### 23 Section 3. Definitions.

24 "Default provider agreement." An agreement between a  
25 hospital-owned physician practice that is part of an integrated  
26 delivery network and a willing health insurance carrier to  
27 provide health care services, which agreement is imposed upon  
28 the parties in the event that they fail to enter into a mutually  
29 agreeable provider contract within the time frames established  
30 by this act.

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

2 "Health care services." Any medical-surgical, hospital,  
3 facility or ancillary service provided to an individual.

4 "Health insurance carrier." An entity licensed in this  
5 Commonwealth to issue health insurance, subscriber contracts,  
6 certifications or plans that provide medical or health care  
7 coverage by a health care facility or licensed health care  
8 provider that is offered or governed under the act of May 17,  
9 1921 (P.L.682, No.284), known as The Insurance Company Law of  
10 1921, including section 630 and Article XXIV thereof, or any of  
11 the following:

12 (1) The act of December 29, 1972 (P.L.1701, No.364),  
13 known as the Health Maintenance Organization Act.

14 (2) The act of May 18, 1976 (P.L.123, No.54), known as  
15 the Individual Accident and Sickness Insurance Minimum  
16 Standards Act.

17 (3) 40 Pa.C.S. Chs. 61 (relating to hospital plan  
18 corporations) and 63 (relating to professional health  
19 services plan corporations).

20 "Hospital-owned physician practice." A physician practice  
21 that meets both of the following:

22 (1) Provides health care services or other professional  
23 medical services to an individual.

24 (2) Is any of the following:

25 (i) Owned or operated by a hospital.

26 (ii) Under joint control of a hospital.

27 (iii) A subsidiary of a hospital.

28 "Integrated delivery network." One or more entities with  
29 common ownership, operation or control, which include both of  
30 the following:

1 (1) One or more hospitals, one or more physician  
2 practices and/or one or more health care providers offering  
3 health care services.

4 (2) One or more entities operating as a health insurance  
5 carrier offering health insurance, administering health  
6 benefits, operating a health maintenance organization and/or  
7 offering other health care benefits and coverage to employers  
8 and/or individuals in this Commonwealth.

9 "Provider contract." A written agreement meeting both of the  
10 following:

11 (1) Is for the payment or reimbursement of health care  
12 services provided to any individual by a hospital-owned  
13 physician practice that is part of an integrated delivery  
14 network or any other entity directly or indirectly owned,  
15 operated or controlled by or otherwise affiliated with the  
16 integrated delivery network.

17 (2) Is between both of the following:

18 (i) A hospital-owned physician practice that is part  
19 of an integrated delivery network or any entity directly  
20 or indirectly owned, operated or controlled by or  
21 otherwise affiliated with an integrated delivery network.

22 (ii) Any health insurance carrier.

23 Section 4. Responsibilities.

24 (a) General rule.--A hospital-owned physician practice that  
25 is part of an integrated delivery network shall comply with the  
26 following responsibilities:

27 (1) Assure availability and accessibility of adequate  
28 health care services to members of a health insurance carrier  
29 which allows access to quality care and continuity of health  
30 care services.

1 (2) Not engage in either of the following:

2 (i) Place restrictive covenants in its employment  
3 contracts that restrain any individual from engaging in  
4 the individual's lawful profession.

5 (ii) Limit or restrict a consumer's access to care  
6 or limit or restrict a consumer's access to continuity of  
7 care solely on the basis of the consumer's health  
8 insurance carrier.

9 (3) Enter into a provider contract with any health  
10 insurance carrier for health care services.

11 (b) Effect of failure to maintain or enter into a mutually  
12 agreeable provider contract.--

13 (1) Failure of any hospital-owned physician practice  
14 that is part of an integrated delivery network and the  
15 willing health insurance carrier to maintain a mutually  
16 agreeable provider contract shall result in the parties  
17 entering into a default provider agreement for health care  
18 services while they submit to mandatory binding arbitration.  
19 The default provider agreement shall set forth payment terms,  
20 while all other contractual terms of the previously executed  
21 contract shall remain in effect until the arbitration process  
22 is completed. The arbitrator shall establish all terms of the  
23 new provider contract.

24 (2) Failure of any newly affiliated hospital-owned  
25 physician practice that is part of an existing integrated  
26 delivery network or the failure of any hospital-owned  
27 physician practice that is part of newly formed integrated  
28 delivery network and a willing health insurance carrier to  
29 enter into a mutually agreeable provider contract within 90  
30 days of affiliation or formation shall result in the parties

1 entering into immediate mandatory binding arbitration. The  
2 arbitrator shall establish all terms of the new provider  
3 contract.

4 (c) Arbitration.--The following shall apply to arbitration  
5 required under subsection (b) (2):

6 (1) A mutually agreeable arbitrator shall be chosen by  
7 the parties from the American Arbitration Association's  
8 National Healthcare Panel of arbitrators experienced in  
9 handling payor-provider disputes.

10 (2) All costs associated with the arbitration shall be  
11 split equally between the parties.

12 (3) The arbitrator shall conduct the arbitration  
13 pursuant to the American Arbitration Association's Healthcare  
14 Payor Provider Arbitration Rules.

15 (4) Contract terms and conditions shall be established  
16 as follows:

17 (i) Each party shall submit best and final contract  
18 terms to the arbitrator.

19 (ii) The arbitrator may request the production of  
20 documents, data and other information.

21 (iii) Payment terms and all other contractual  
22 provisions shall be established by the arbitrator.

23 (d) Term of default provider agreement.--The default  
24 provider agreement shall remain in effect until the arbitration  
25 process between the hospital-owned physician practice that is  
26 part of an integrated delivery network and a willing health  
27 insurance carrier is completed.

28 (e) Payment under the default provider agreement.--The  
29 reimbursement rate that a health insurance carrier is required  
30 to pay shall be an amount equal to the greatest of the following

1 possible amounts:

2 (1) The amount negotiated with in-network providers for  
3 the same services.

4 (2) The amount calculated by the same method the health  
5 insurance carrier generally uses to determine payments for  
6 out-of-network services, such as the usual, customary and  
7 reasonable charge.

8 (3) The amount that would be paid under Medicare for the  
9 same services.

10 (f) Prohibition.--A hospital-owned physician practice is  
11 prohibited from incorporating a termination provision within a  
12 provider contract with a health insurance carrier that allows  
13 for termination for anything other than willful breach.

14 (g) Copies of contracts.--Copies of all provider contracts  
15 between a hospital-owned physician practice that is part of an  
16 integrated delivery network and any health insurance carrier  
17 shall be provided to the department.

18 Section 5. Confidentiality.

19 Any provider contracts, documents, materials or information  
20 received by the department from a hospital-owned physician  
21 practice for the purpose of compliance with this act and any  
22 regulations developed under this act shall be confidential,  
23 subject to the following:

24 (1) The department may use the information obtained  
25 pursuant to the provisions of this act for the sole purpose  
26 of compliance with this act.

27 (2) Any provider contracts, documents, materials or  
28 information made confidential under this act shall not be  
29 subject to requests under the act of February 14, 2008

30 (P.L.6, No.3), known as the Right-to-Know Law.

1 Section 6. Enforcement.

2 (a) General rule.--The department shall ensure compliance  
3 with this act and shall investigate potential violations of this  
4 act based upon information received from health insurance  
5 carriers, hospital-owned physician practices, enrollees and  
6 other sources.

7 (b) Regulations.--The department shall promulgate such  
8 regulations as may be necessary to carry out the provisions of  
9 this act.

10 Section 7. Civil penalties.

11 The department may impose a civil penalty of not more than  
12 \$25,000 per day, not to exceed \$1,000,000 per calendar year, on  
13 a hospital-owned physician practice that is part of an  
14 integrated delivery network for a violation of this act.

15 Section 8. Effective date.

16 This act shall take effect in 90 days.