
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2127 Session of
2018

INTRODUCED BY CHRISTIANA, MILLARD AND WARD, MARCH 9, 2018

REFERRED TO COMMITTEE ON HEALTH, MARCH 9, 2018

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

27 "Default provider agreement." An agreement between a
28 hospital-owned physician practice that is part of an integrated
29 delivery network and a willing health insurance carrier to
30 provide health care services, which agreement is imposed upon

1 the parties in the event that they fail to enter into a mutually
2 agreeable provider contract within the time frames established
3 by this act.

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

5 "Health care services." A medical-surgical, hospital,
6 facility or ancillary service provided to an individual.

7 "Health insurance carrier." An entity licensed in this
8 Commonwealth to issue health insurance, subscriber contracts,
9 certifications or plans that provide medical or health care
10 coverage by a health care facility or licensed health care
11 provider that is offered or governed under this act or any of
12 the following:

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

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

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

21 "Health insurance policy." A health insurance policy,
22 subscriber contract, certificate or policy that provides health
23 or sickness and accident coverage offered by a health insurance
24 carrier and that is subject to review by the department under
25 the provisions of the act of December 18, 1996 (P.L.1066,
26 No.159), known as the Accident and Health Filing Reform Act. The
27 term does not include any of the following:

28 (1) An accident-only policy.

29 (2) A credit-only policy.

30 (3) A long-term care or disability income policy.

- 1 (4) A specified disease policy.
- 2 (5) A Medicare supplement policy.
- 3 (6) A Civilian Health and Medical Program of the
4 Uniformed Services (CHAMPUS) supplement policy.
- 5 (7) A dental-only policy, other than a qualified dental
6 policy.
- 7 (8) A vision-only policy.
- 8 (9) A workers' compensation policy.
- 9 (10) An automobile medical payment policy under 75
10 Pa.C.S. (relating to vehicles).
- 11 (11) Any other similar policies providing for limited
12 benefits.

13 "Hospital-owned physician practice." A physician practice
14 that meets both of the following:

- 15 (1) Provides health care services or other professional
16 medical services to an individual.
- 17 (2) Is any of the following:
- 18 (i) Owned or operated by a hospital.
- 19 (ii) Under joint control of a hospital.
- 20 (iii) A subsidiary of a hospital.

21 "Integrated delivery network." One or more entities with
22 common ownership, operation or control that include both of the
23 following:

- 24 (1) A hospital, physician practice or health care
25 provider, offering health care services.
- 26 (2) An entity operating as a health insurance carrier
27 offering health insurance, administering health benefits,
28 operating a health maintenance organization or offering other
29 health care benefits and coverage to employers or individuals
30 in this Commonwealth.

1 "Provider contract." A written agreement that meets all of
2 the following:

3 (1) Is for the payment or reimbursement of health care
4 services provided to an individual by a hospital-owned
5 physician practice that is part of an integrated delivery
6 network or any other entity directly or indirectly owned,
7 operated or controlled by or otherwise affiliated with the
8 integrated delivery network.

9 (2) Is between the following:

- 10 (i) a hospital-owned physician practice that is part
11 of an integrated delivery network or any entity directly
12 or indirectly owned, operated or controlled by or
13 otherwise affiliated with an integrated delivery network;
14 and
15 (ii) a health insurance carrier.

16 Section 4. Responsibilities.

17 (a) General rule.--A hospital-owned physician practice that
18 is part of an integrated delivery network shall comply with all
19 of the following responsibilities:

20 (1) Ensure availability, accessibility and continuity of
21 adequate health care services to members of a health
22 insurance carrier.

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

24 (i) Place restrictive covenants in its employment
25 contracts that restrain an individual from engaging in
26 the individual's lawful profession.

27 (ii) Limit or restrict a consumer's access to care
28 or limit or restrict a consumer's access to continuity of
29 care solely on the basis of the consumer's health
30 insurance carrier.

1 (3) Enter into a provider contract with any health
2 insurance carrier that is willing to enter into a provider
3 contract for health care services.

4 (b) Effect of failure to maintain or enter into a mutually
5 agreeable provider contract.--The following shall apply:

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

17 (2) Failure of a newly affiliated hospital-owned
18 physician practice that is part of an existing integrated
19 delivery network or the failure of a hospital-owned physician
20 practice that is part of a newly formed integrated delivery
21 network and a willing health insurance carrier to enter into
22 a mutually agreeable provider contract within 90 days of
23 affiliation or formation shall result in the parties entering
24 into immediate mandatory binding arbitration. The arbitrator
25 shall set all terms of the new provider contract.

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

28 (1) A mutually agreeable arbitrator shall be chosen by
29 the parties from the American Arbitration Association's
30 National Healthcare Panel of arbitrators experienced in

1 handling payor-provider disputes.

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

4 (3) The arbitrator shall conduct the arbitration
5 pursuant to the American Arbitration Association's Healthcare
6 Payor Provider Arbitration Rules.

7 (4) Contract terms and conditions shall be established
8 as follows:

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

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

13 (iii) Payment terms and all other contractual
14 provisions shall be set by the arbitrator.

15 (d) Term of default provider agreement.--The default
16 provider agreement shall last until the arbitration process
17 between the hospital-owned physician practice that is part of an
18 integrated delivery network and a willing health insurance
19 carrier is completed.

20 (e) Payment under the default provider agreement.--The
21 reimbursement rate that a health insurance carrier is required
22 to pay shall be an amount equal to the greatest of the following
23 amounts:

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

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

30 (3) The amount that would be paid under Medicare for the

1 same services.

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

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

10 Section 5. Confidentiality.

11 The following confidentiality provisions shall apply:

12 (1) Provider contracts, documents, materials or
13 information received by the department from a hospital-owned
14 physician practice for the purpose of compliance with this
15 act and any regulations developed under this act shall be
16 confidential.

17 (2) The department may use the information obtained
18 pursuant to the provisions of this act for the sole purpose
19 of compliance with this act.

20 (3) Provider contracts, documents, materials or
21 information made confidential under this act shall not be
22 subject to requests under the act of February 14, 2008

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

24 Section 6. Enforcement.

25 (a) General rule.--The department shall enforce compliance
26 with this act and shall investigate potential violations of this
27 act based upon information received from health insurance
28 carriers, hospital-owned physician practices, enrollees and
29 other sources.

30 (b) Regulations.--The department shall promulgate such

1 regulations as may be necessary to carry out the provisions of
2 this act.

3 Section 7. Civil penalties.

4 The department may impose a civil penalty of not more than
5 \$25,000 per day, not to exceed \$1,000,000 per calendar year, on
6 a hospital-owned physician practice that is part of an
7 integrated delivery network for a violation of this act.

8 Section 8. Effective date.

9 This act shall take effect in 90 days.