

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 257 Session of 2017

INTRODUCED BY WARD, WHITE, SCARNATI, GORDNER, SCHWANK, BROOKS, FOLMER, YUDICHAK, HUTCHINSON, COSTA, STEFANO, AUMENT, BOSCOLA AND RAFFERTY, JANUARY 27, 2017

SENATOR WHITE, BANKING AND INSURANCE, AS AMENDED, MARCH 27, 2018

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
2 act relating to insurance; amending, revising, and
3 consolidating the law providing for the incorporation of
4 insurance companies, and the regulation, supervision, and
5 protection of home and foreign insurance companies, Lloyds
6 associations, reciprocal and inter-insurance exchanges, and
7 fire insurance rating bureaus, and the regulation and
8 supervision of insurance carried by such companies,
9 associations, and exchanges, including insurance carried by
10 the State Workmen's Insurance Fund; providing penalties; and
11 repealing existing laws," providing for quality eye care for
12 insured Pennsylvanians.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. The act of May 17, 1921 (P.L.682, No.284), known
16 as The Insurance Company Law of 1921, is amended by adding an
17 article to read:

ARTICLE XXVII

QUALITY EYE CARE FOR INSURED PENNSYLVANIANS

20 Section 2701. Short title of article.

21 This article shall be known and may be cited as the Quality
22 Eye Care for Insured Pennsylvanians Act.

1 Section 2702. Definitions.

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

5 "Covered vision services." Vision services AND MATERIALS for <--
6 which reimbursement is available under an insured's A HEALTH <--
7 INSURANCE policy, regardless of whether the reimbursement is
8 contractually limited by a deductible, copayment, coinsurance,
9 waiting period, annual or lifetime maximum, frequency limitation
10 or alternative benefit payment.

11 "Enrollee." A subscriber afforded coverage for services, <--
12 materials or both under an insurance policy, a vision care plan
13 or a government program.

14 "Eye care provider." A licensed doctor of optometry
15 practicing under the authority of the act of June 6, 1980
16 (P.L.197, No.57), known as the Optometric Practice and Licensure
17 Act, or a licensed physician who has also completed a residency
18 in ophthalmology.

19 "Government program." A program that issues coverage for
20 materials or services pursuant to this act and is governed by or
21 subject to any of the following:

22 (1) The medical assistance program established under the
23 act of June 13, 1967 (P.L.31, No.21), known as the Human
24 Services Code.

25 (2) A program administered by a Medicaid managed care
26 organization as defined in section 1903(m)(1)(A) of the
27 Social Security Act (49 Stat. 620, 42 U.S.C. § 1396b(m)(1)
28 (A)) that is a party to a Medicaid managed care contract with
29 the Department of Human Services.

30 (3) The Medicare program established under the Social

1 Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.).

2 ~~(4) The Medicare Advantage program established under the~~
3 ~~Social Security Act.~~

4 "DEPARTMENT." THE INSURANCE DEPARTMENT OF THE COMMONWEALTH. <--

5 "Insurance "HEALTH INSURANCE policy." An individual or group <--

6 health insurance policy, SUBSCRIBER contract, CERTIFICATE or <--

7 plan issued by or through an insurer, a vision care plan or a <--

8 government program that provides coverage for materials, <--

9 services or both provided by an eye care provider. THAT PROVIDES <--

10 COVERED VISION CARE. FOR PURPOSES OF THIS ARTICLE, THE TERM

11 INCLUDES VISION ONLY INSURANCE COVERAGE. The term does not

12 include accident only, fixed indemnity, limited benefit, credit,

13 dental, specified disease, Civilian Health and Medical Program

14 of the Uniformed Services (CHAMPUS) supplement, long-term care

15 or disability income, workers' compensation or automobile

16 medical payment insurance.

17 "Insurer." An entity or affiliate entity that issues an <--

18 insurance policy pursuant to this act and is subject to any one

19 of the following:

20 "HEALTH INSURER." AN ENTITY LICENSED BY THE DEPARTMENT WITH <--

21 AN ACCIDENT AND HEALTH AUTHORITY TO ISSUE A POLICY, SUBSCRIBER

22 CONTRACT, CERTIFICATE OR PLAN THAT PROVIDES MEDICAL OR HEALTH

23 CARE COVERAGE, INCLUDING VISION COVERAGE, AND IS OFFERED OR

24 GOVERNED UNDER ANY OF THE FOLLOWING:

25 (1) ~~This act~~ SECTION 630, ARTICLE XXIV OR OTHER <--

26 PROVISION OF THIS ACT.

27 (2) The act of December 29, 1972 (P.L.1701, No.364),

28 known as the Health Maintenance Organization Act.

29 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan

30 corporations).

1 (4) 40 Pa.C.S. Ch. 63 (relating to professional health
2 services plan corporations).

3 ~~(5) A preferred provider organization.~~ <--

4 ~~"Licensure board." Any or all of the following, depending on~~
5 ~~the licensure of the affected individual:~~

6 ~~(1) The State Board of Medicine.~~

7 ~~(2) The State Board of Osteopathic Medicine.~~

8 ~~(3) The State Board of Optometry.~~

9 "INSURED." AN INDIVIDUAL ON WHOSE BEHALF A HEALTH INSURER IS <--
10 OBLIGATED TO PAY FOR VISION CARE UNDER A HEALTH INSURANCE
11 POLICY.

12 "Materials." Ophthalmic devices, including, but not limited
13 to, lenses, devices containing lenses, artificial intraocular
14 lenses, ophthalmic frames and other lens mounting apparatus,
15 prisms, lens treatments and coating, contact lenses and
16 prosthetic devices to correct, relieve or treat defects or
17 abnormal conditions of the human eye or its adnexa associated
18 with the delivery of services, materials or both by an eye care <--
19 provider. VISION CARE. <--

20 "NONCOVERED SERVICES." VISION CARE THAT IS NOT COVERED BUT
21 FOR WHICH A DISCOUNT MAY BE PROVIDED UNDER THE TERMS OF A HEALTH
22 INSURANCE POLICY.

23 "Physician." An individual licensed under the laws of this
24 Commonwealth to engage in the practice of:

25 (1) Medicine and surgery in all its branches within the
26 scope of the act of December 20, 1985 (P.L.457, No.112),
27 known as the Medical Practice Act of 1985.

28 (2) Osteopathic medicine and surgery within the scope of
29 the act of October 5, 1978 (P.L.1109, No.261), known as the
30 Osteopathic Medical Practice Act.

1 ~~"Services." The delivery of eye care services, materials or <--~~
2 ~~both by an eye care provider.~~

3 ~~"Vision care plan." An entity that creates, promotes, sells,~~
4 ~~provides, advertises or administers an integrated or stand alone~~
5 ~~vision benefit plan, or a vision care insurance policy or~~
6 ~~contract that provides coverage for materials, services or both~~
7 ~~to an enrollee pursuant to an insurance policy, vision care plan~~
8 ~~or government program.~~

9 ~~Section 2703. Restrictions on participating provider~~
10 ~~agreements.~~

11 ~~A participating provider agreement between an eye care~~
12 ~~provider and an insurer, vision care plan or government program~~
13 ~~shall comply with all of the following:~~

14 ~~(1) The eye care provider may not be required to provide~~
15 ~~services to the insurer's insureds at a fee set by the~~
16 ~~insurer unless those services are covered vision services.~~

17 ~~(2) Reimbursements paid by an insurer, vision care plan~~
18 ~~or government program for covered services and covered~~
19 ~~materials under the participating provider agreement shall be~~
20 ~~reasonable and shall not provide nominal reimbursement in~~
21 ~~order to claim that services and materials are included in~~
22 ~~covered vision services under the insurance policy, vision~~
23 ~~care plan or government program.~~

24 ~~(3) An eye care provider may not charge more for~~
25 ~~services and materials that are noncovered services or~~
26 ~~noncovered materials to an enrollee of an insurer, vision~~
27 ~~care plan or government program than the usual and customary~~
28 ~~rate for those services and materials.~~

29 ~~(4) The participating provider agreement may not~~
30 ~~restrict or limit, either directly or indirectly, the eye~~

~~care provider's choice of sources and suppliers of services
or materials or the use of optical laboratories provided by
the eye care provider to an enrollee.~~

~~(5) The terms or reimbursement rates contained in the
participating provider agreement may not be changed without a
signed acknowledgment of written consent and agreement from
the eye care provider.~~

~~Section 2704. Prohibition on contracting.~~

~~No insurance policy, vision care plan or government program
may impose a condition or restriction on an eye care provider
that is not necessary for the delivery of services or materials
or that has the effect of excluding the eye care provider from
participation in the insurance policy, vision care plan,
government program or any of the participating provider panels
for those entities.~~

~~Section 2705. Penalties.~~

~~A violation of the provisions of this article by an insurer
or a vision care plan with frequency sufficient to constitute a
general business practice shall be considered a violation of the
act of July 22, 1974 (P.L.589, No.205), known as the Unfair
Insurance Practices Act, and is deemed an unfair method of
competition and an unfair deceptive act or practice pursuant to
that act.~~

~~Section 2706. Applicability.~~

~~The requirements of this article shall apply to an insurer,
insurance policy, a vision care plan or a government program and
any contracts, addendums and certificates executed, delivered,
issued for delivery, continued or renewed in this Commonwealth.~~

~~"VISION CARE SUPPLIER." A PERSON OR ENTITY, OTHER THAN A
VISION CARE PROVIDER, THAT CREATES, PROMOTES, SELLS, PROVIDES,~~

<--

1 ADVERTISES OR ADMINISTERS VISION CARE, INCLUDING AN OPTICAL
2 LABORATORY. THE TERM INCLUDES PERSONS OR ENTITIES AFFILIATED
3 WITH A HEALTH INSURER.

4 SECTION 2703. VISION CARE PROVIDER AND VISION CARE SUPPLIER.

5 A HEALTH INSURANCE POLICY SHALL ALLOW AN INSURED WHO RECEIVES
6 VISION CARE FROM AN IN-NETWORK VISION CARE PROVIDER TO SELECT AN
7 OUT-OF-NETWORK VISION CARE SUPPLIER FOR RELATED VISION CARE ON
8 THE RECOMMENDATION OR REFERRAL OF THE IN-NETWORK VISION CARE
9 PROVIDER, PROVIDED THAT THE IN-NETWORK VISION CARE PROVIDER
10 GIVES TO THE INSURED, PRIOR TO RECOMMENDING, REFERRING,
11 PRESCRIBING OR ORDERING ANY VISION CARE FROM THE OUT-OF-NETWORK
12 VISION CARE SUPPLIER, WRITTEN NOTICE THAT:

13 (1) THE OUT-OF-NETWORK VISION CARE SUPPLIER IS NOT AN
14 IN-NETWORK VISION CARE SUPPLIER.

15 (2) THE INSURED HAS THE OPTION OF SELECTING AN IN-
16 NETWORK VISION CARE SUPPLIER.

17 (3) THE INSURED MAY HAVE DIFFERENT FINANCIAL OBLIGATIONS
18 DEPENDING ON WHETHER THE VISION CARE SUPPLIER IS IN-NETWORK
19 OR OUT-OF-NETWORK.

20 SECTION 2704. DISCOUNT ACCESS.

21 A HEALTH INSURANCE POLICY PROVIDING DISCOUNTS FOR NONCOVERED
22 SERVICES PROVIDED BY A VISION CARE PROVIDER SHALL ALLOW THE
23 VISION CARE PROVIDER TO OPT OUT OF THE CONTRACTUAL OBLIGATION TO
24 PROVIDE SUCH DISCOUNTS, PROVIDED THAT THE VISION CARE PROVIDER
25 PROVIDES WRITTEN DISCLOSURE TO THE INSURED THAT THE VISION CARE
26 PROVIDER DOES NOT PARTICIPATE IN THE INSURED'S DISCOUNT PROGRAM.

27 SECTION 2705. ENFORCEMENT.

28 (A) SCOPE.--THE DEPARTMENT MAY INVESTIGATE AND ENFORCE THE
29 PROVISIONS OF THIS ARTICLE ONLY INSOFAR AS THE ACTIONS OR
30 IN ACTIONS BEING INVESTIGATED RELATE TO COVERAGE UNDER A HEALTH

1 INSURANCE POLICY.

2 (B) COMMISSIONER POWER.--UPON SATISFACTORY EVIDENCE OF A
3 VIOLATION OF THIS ARTICLE WITHIN THE SCOPE OF THE DEPARTMENT'S
4 INVESTIGATIVE AND ENFORCEMENT AUTHORITY UNDER SUBSECTION (A),
5 THE COMMISSIONER MAY, IN THE COMMISSIONER'S DISCRETION, IMPOSE
6 ANY OF THE PENALTIES SPECIFIED IN SECTION 5 OF THE ACT OF JUNE
7 25, 1997 (P.L.295, NO.29), KNOWN AS THE PENNSYLVANIA HEALTH CARE
8 INSURANCE PORTABILITY ACT.

9 (C) REMEDIES CUMULATIVE.--THE ENFORCEMENT REMEDIES IMPOSED
10 UNDER THIS SECTION ARE IN ADDITION TO ANY OTHER REMEDIES OR
11 PENALTIES THAT MAY BE IMPOSED UNDER ANY OTHER APPLICABLE LAW OF
12 THIS COMMONWEALTH, INCLUDING THE ACT OF JULY 22, 1974 (P.L.589,
13 NO.205), KNOWN AS THE UNFAIR INSURANCE PRACTICES ACT. A
14 VIOLATION OF THIS ARTICLE SHALL BE DEEMED TO BE AN UNFAIR METHOD
15 OF COMPETITION AND AN UNFAIR OR DECEPTIVE ACT OR PRACTICE UNDER
16 THE UNFAIR INSURANCE PRACTICES ACT.

17 (D) ADMINISTRATIVE PROCEDURE.--THE ADMINISTRATIVE PROVISIONS
18 OF THIS SECTION SHALL BE SUBJECT TO 2 PA.C.S. CH. 5 SUBCH. A
19 (RELATING TO PRACTICE AND PROCEDURE OF COMMONWEALTH AGENCIES). A
20 PARTY AGAINST WHOM PENALTIES ARE ASSESSED IN AN ADMINISTRATIVE
21 ACTION MAY APPEAL TO COMMONWEALTH COURT AS PROVIDED IN 2 PA.C.S.
22 CH. 7 SUBCH. A (RELATING TO JUDICIAL REVIEW OF COMMONWEALTH
23 AGENCY ACTION).

24 (E) ENFORCEMENT REMEDIES.--THE ENFORCEMENT REMEDIES IMPOSED
25 UNDER THIS SECTION SHALL BE IN ADDITION TO ANY OTHER REMEDIES OR
26 PENALTIES THAT MAY BE IMPOSED UNDER THE LAWS OF THIS
27 COMMONWEALTH.

28 SECTION 2706. REGULATIONS.

29 THE DEPARTMENT MAY PROMULGATE REGULATIONS AS MAY BE NECESSARY
30 OR APPROPRIATE TO IMPLEMENT THIS ARTICLE.

1 SECTION 2707. APPLICABILITY.

2 THIS ACT SHALL APPLY AS FOLLOWS:

3 (1) FOR HEALTH INSURANCE POLICIES FOR WHICH EITHER RATES
4 OR FORMS ARE REQUIRED TO BE FILED WITH FEDERAL GOVERNMENT OR
5 THE INSURANCE DEPARTMENT, THIS ACT SHALL APPLY TO ANY POLICY
6 FOR WHICH A FORM OR RATE IS FIRST FILED ON OR AFTER THE
7 EFFECTIVE DATE OF THIS SECTION.

8 (2) FOR HEALTH INSURANCE POLICIES FOR WHICH NEITHER
9 RATES NOR FORMS ARE REQUIRED TO BE FILED WITH THE FEDERAL
10 GOVERNMENT OR THE INSURANCE DEPARTMENT, THIS ACT SHALL APPLY
11 TO ANY POLICY ISSUED OR RENEWED ON OR AFTER 180 DAYS AFTER
12 THE EFFECTIVE DATE OF THIS SECTION.

13 Section 2. This act shall take effect in 60 days.