

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 978 Session of 2015

INTRODUCED BY WARD, SCARNATI, FOLMER, RAFFERTY, GORDNER, VOGEL, BOSCOLA, McGARRIGLE, TEPLITZ, YUDICHAK, BROOKS, HUTCHINSON, SABATINA, WOZNIAK, STEFANO, WHITE, SCHWANK, LEACH, McILHINNEY AND CORMAN, AUGUST 14, 2015

SENATOR WHITE, BANKING AND INSURANCE, AS AMENDED, OCTOBER 19, 2016

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

1 Eye Care for Insured Pennsylvanians Act.

2 Section 2702. Definitions.

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

6 "Coverage." Inclusion in an insurance policy, a vision care <--
7 plan or a government program of services, materials or both
8 where reimbursement from the insurer, vision care plan or
9 government program is provided to an eye care provider under an
10 enrollee's contractual plan or where reimbursement would be
11 available for the application of the enrollee's contractual plan
12 limitations on deductibles, copayments or coinsurance.

13 "COVERED VISION SERVICES." VISION SERVICES FOR WHICH <--
14 REIMBURSEMENT IS AVAILABLE UNDER AN INSURED'S POLICY, REGARDLESS
15 OF WHETHER THE REIMBURSEMENT IS CONTRACTUALLY LIMITED BY A
16 DEDUCTIBLE, COPAYMENT, COINSURANCE, WAITING PERIOD, ANNUAL OR
17 LIFETIME MAXIMUM, FREQUENCY LIMITATION OR ALTERNATIVE BENEFIT
18 PAYMENT.

19 "Enrollee." A subscriber afforded coverage for services,
20 materials or both under an insurance policy, a vision care plan
21 or a government program.

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

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

30 (1) The medical assistance program established under the

1 act of June 13, 1967 (P.L.31, No.21), known as the Public
2 Welfare Code.

3 (2) The Children's Health Care Program established under
4 Article XXIII.

5 (3) A program administered by a Medicaid managed care
6 organization as defined in section 1903(m)(1)(A) of the
7 Social Security Act (49 Stat. 620, 42 U.S.C. § 1396b(m)(1)
8 (A)) that is a party to a Medicaid managed care contract with
9 the Department of Human Services.

10 (4) The Medicare program established under the Social
11 Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.).

12 (5) The Medicare Advantage program established under the
13 Social Security Act.

14 "Insurance policy." An individual or group health insurance
15 policy, contract or plan issued by or through an insurer, a
16 vision care plan or a government program that provides coverage
17 for materials, services or both provided by an eye care
18 provider. The term does not include accident only, fixed
19 indemnity, limited benefit, credit, dental, specified disease,
20 Civilian Health and Medical Program of the Uniformed Services
21 (CHAMPUS) supplement, long-term care or disability income,
22 workers' compensation or automobile medical payment insurance.

23 "Insurer." An entity or affiliate entity that issues an
24 insurance policy pursuant to this act and is subject to any one
25 of the following:

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

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

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

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

25 "Services." The delivery of any eye care services, materials
26 or both by an eye care provider.

27 "Vision care plan." An entity that creates, promotes, sells,
28 provides, advertises or administers an integrated or stand-alone
29 vision benefit plan, or a vision care insurance policy or
30 contract that provides coverage for materials, services or both

1 to an enrollee pursuant to an insurance policy, vision care plan
2 or government program.

3 Section 2703. Restrictions on participating provider
4 agreements.

5 A participating provider agreement between an eye care
6 provider and an insurer, vision care plan or government program
7 shall comply with all of the following:

8 (1) The participating provider agreement may not require <--
9 that an eye care provider provide services, materials or both
10 at a fee limited or set by the insurer, vision care plan or
11 government program unless those services, materials or both
12 are subject to coverage and are reimbursed as covered
13 services or covered materials under the participating
14 provider agreement. THE EYE CARE PROVIDER MAY NOT BE REQUIRED <--
15 TO PROVIDE SERVICES TO THE INSURER'S INSUREDS AT A FEE SET BY
16 THE INSURER UNLESS THOSE SERVICES ARE COVERED VISION
17 SERVICES.

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

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

30 (4) The participating provider agreement may not

1 restrict or limit, either directly or indirectly, the eye
2 care provider's choice of sources and suppliers of services
3 or materials or the use of optical laboratories provided by
4 the eye care provider to an enrollee.

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

9 Section 2704. Prohibition on contracting.

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

17 ~~Section 2705. Interference with other contractual~~
18 ~~relationships.~~

<--

19 ~~No insurer, vision care plan or government program offering~~
20 ~~group or individual coverage may interfere with any existing~~
21 ~~contractual relationship, Federal or State requirement or the~~
22 ~~doctor-patient relationship by directly communicating with an~~
23 ~~enrollee in a manner that interferes with or contravenes those~~
24 ~~relationships and requirements.~~

25 ~~Section 2706. Private right of action for eye care providers.~~

26 ~~A person adversely affected by a violation of this article~~
27 ~~may bring an action in a court of competent jurisdiction for~~
28 ~~injunctive relief and monetary damages and if successful in an~~
29 ~~action, shall be entitled to recover against the opposing party~~
30 ~~actual damages, a penalty of up to \$1,000 for each day of~~

1 ~~violation and reasonable attorney fees and costs.~~

2 ~~Section 2707 2705. Penalties.~~ <--

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

10 ~~Section 2708 2706. Applicability.~~ <--

11 ~~The requirements of this article shall apply to an insurer,~~
12 ~~insurance policy, a vision care plan or a government program and~~
13 ~~any contracts, addendums and certificates executed, delivered,~~
14 ~~issued for delivery, continued or renewed in this Commonwealth.~~
15 ~~No insurance policy, vision care plan or government program~~ <--
16 ~~contract may be in effect longer than two years from the date of~~
17 ~~initial signature or last renewal.~~

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