

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

AS AMENDED ON SECOND CONSIDERATION, MAY 21, 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 CARE." Vision services and materials for <--
6 which reimbursement is available under a health insurance
7 policy, regardless of whether the reimbursement is contractually
8 limited by a deductible, copayment, coinsurance, waiting period,
9 annual or lifetime maximum, frequency limitation or alternative
10 benefit payment.

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

12 "Health insurance policy." An individual or group health
13 insurance policy, subscriber contract, certificate or plan
14 issued by or through an insurer that provides covered vision
15 care. For purposes of this article, the term includes vision <--
16 only insurance coverage. The term does not include accident
17 only, fixed indemnity, limited benefit, credit, dental,
18 specified disease, Civilian Health and Medical Program of the
19 Uniformed Services (CHAMPUS) supplement, long-term care or
20 disability income, workers' compensation or automobile medical
21 payment insurance.

22 "Health insurer." An entity licensed by the department with
23 an accident and health authority to issue a policy, subscriber <--
24 contract, certificate or plan that provides medical or health
25 care coverage, including vision coverage, and is offered or <--
26 governed under any of the following:

27 (1) Section 630, Article XXIV or other provision of this
28 act.

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

1 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan
2 corporations).

3 (4) 40 Pa.C.S. Ch. 63 (relating to professional health
4 services plan corporations).

5 "Insured." An individual on whose behalf a health insurer is
6 obligated to pay for vision care under a health insurance
7 policy.

8 "Materials." Ophthalmic devices, including, but not limited
9 to, lenses, devices containing lenses, ~~artificial intraocular~~ <--
10 ~~lenses,~~ ophthalmic frames and other lens mounting apparatus,
11 prisms, lens treatments and coating, contact lenses and
12 prosthetic devices to correct, relieve or treat defects or
13 abnormal conditions of the human eye or its adnexa associated
14 with the delivery of vision care.

15 "Noncovered services." Vision care that is not covered but
16 for which a discount may be provided under the terms of a health
17 insurance policy.

18 "Physician." ~~An individual licensed under the laws of this~~ <--
19 Commonwealth to engage in the practice of:

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

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

26 "VISION CARE." A PROVISION OF EYE CARE SERVICES, MATERIALS <--
27 OR BOTH.

28 "VISION CARE PROVIDER." A LICENSED DOCTOR OF OPTOMETRY
29 PRACTICING UNDER THE AUTHORITY OF THE ACT OF JUNE 6, 1980
30 (P.L.197, NO.57), KNOWN AS THE OPTOMETRIC PRACTICE AND LICENSURE

1 ACT, OR A LICENSED PHYSICIAN WHO HAS ALSO COMPLETED A RESIDENCY
2 IN OPHTHALMOLOGY.

3 "Vision care supplier." A person or entity, ~~other than a~~ <--
4 ~~vision care provider,~~ that creates, promotes, sells, provides,
5 advertises or administers vision care SUPPLIES, including an <--
6 optical laboratory. The term includes persons or entities
7 affiliated with a health insurer.

8 Section 2703. Vision care provider and vision care supplier
9 SELECTION. <--

10 A health insurance policy shall allow an insured who receives
11 vision care from an in-network vision care provider to select an
12 out-of-network vision care supplier for related vision care on
13 the recommendation or referral of the in-network vision care
14 provider, provided that the in-network vision care provider
15 gives to the insured, prior to recommending, referring,
16 prescribing or ordering any vision care from the out-of-network
17 vision care supplier, written notice that:

18 (1) The out-of-network vision care supplier is not an
19 in-network vision care supplier.

20 (2) The insured has the option of selecting an in-
21 network vision care supplier.

22 (3) The insured may have different financial obligations
23 depending on whether the vision care supplier is in-network
24 or out-of-network.

25 Section 2704. Discount access.

26 ~~A health insurance policy providing discounts for noncovered <--~~
27 ~~services provided by a vision care provider shall allow the~~
28 ~~vision care provider to opt out of the contractual obligation to~~
29 ~~provide such discounts, provided that the vision care provider~~
30 ~~provides written disclosure to the insured that the vision care~~

1 ~~provider does not participate in the insured's discount program.~~

2 A HEALTH INSURANCE POLICY THAT HAS A DISCOUNT PROGRAM FOR <--
3 NONCOVERED SERVICES SHALL PERMIT AN INSURED WHO RECEIVES VISION
4 CARE FROM AN IN-NETWORK VISION CARE PROVIDER TO RECEIVE A
5 NONCOVERED SERVICE FROM THE IN-NETWORK VISION CARE PROVIDER AT A
6 NONDISCOUNTED RATE, PROVIDED THAT THE VISION CARE PROVIDER GIVES
7 TO THE INSURED, PRIOR TO RECEIPT OF THE NONCOVERED SERVICE,
8 WRITTEN DISCLOSURE THAT THE VISION CARE PROVIDER DOES NOT
9 PARTICIPATE IN THE INSURED'S DISCOUNT PROGRAM.

10 Section 2705. Enforcement.

11 (a) Scope.--The department may investigate and enforce the
12 provisions of this article only insofar as the actions or
13 inactions being investigated relate to coverage under a health
14 insurance policy.

15 ~~(b) Commissioner power. Upon satisfactory evidence of a~~ <--
16 ~~violation of this article within the scope of the department's~~
17 ~~investigative and enforcement authority under subsection (a),~~
18 ~~the commissioner may, in the commissioner's discretion, impose~~
19 ~~any of the penalties specified in section 5 of the act of June~~
20 ~~25, 1997 (P.L.295, No.29), known as the Pennsylvania Health Care~~
21 ~~Insurance Portability Act.~~

22 ~~(c) Remedies cumulative. The enforcement remedies imposed~~
23 ~~under this section are in addition to any other remedies or~~
24 ~~penalties that may be imposed under any other applicable law of~~
25 ~~this Commonwealth, including the act of July 22, 1974 (P.L.589,~~
26 ~~No.205), known as the Unfair Insurance Practices Act. A~~
27 ~~violation of this article shall be deemed to be an unfair method~~
28 ~~of competition and an unfair or deceptive act or practice under~~
29 ~~the Unfair Insurance Practices Act.~~

30 ~~(d) Administrative procedure. The administrative provisions~~

~~1 of this section shall be subject to 2 Pa.C.S. Ch. 5 Subch. A~~
~~2 (relating to practice and procedure of Commonwealth agencies). A~~
~~3 party against whom penalties are assessed in an administrative~~
~~4 action may appeal to Commonwealth Court as provided in 2 Pa.C.S.~~
~~5 Ch. 7 Subch. A (relating to judicial review of Commonwealth~~
~~6 agency action).~~

~~7 (e) Enforcement remedies. The enforcement remedies imposed~~
~~8 under this section shall be in addition to any other remedies or~~
~~9 penalties that may be imposed under the laws of this~~
~~10 Commonwealth.~~

11 (B) INSURANCE COMMISSIONER POWER.--UPON SATISFACTORY <--
12 EVIDENCE OF A VIOLATION OF THIS ARTICLE BY ANY INSURER OR OTHER
13 PERSON WITHIN THE SCOPE OF THE DEPARTMENT'S INVESTIGATIVE AND
14 ENFORCEMENT AUTHORITY UNDER SUBSECTION (A), THE INSURANCE
15 COMMISSIONER MAY, IN THE INSURANCE COMMISSIONER'S DISCRETION,
16 PURSUE ANY OF THE FOLLOWING ACTIONS:

17 (1) SUSPEND, REVOKE OR REFUSE TO RENEW THE LICENSE OF
18 THE OFFENDING PERSON.

19 (2) ENTER A CEASE AND DESIST ORDER.

20 (3) IMPOSE A CIVIL PENALTY OF NOT MORE THAN \$5,000 FOR
21 EACH ACTION IN VIOLATION OF THIS ARTICLE.

22 (4) IMPOSE A CIVIL PENALTY OF NOT MORE THAN \$10,000 FOR
23 EACH ACTION IN WILLFUL VIOLATION OF THIS ARTICLE.

24 (C) LIMITATION.--PENALTIES IMPOSED UNDER THIS ARTICLE SHALL
25 NOT EXCEED \$500,000 IN THE AGGREGATE DURING A CALENDER YEAR.

26 (D) VIOLATIONS BY OPTOMETRISTS AND OPHTHALMOLOGISTS.--A
27 VIOLATION OF THIS ARTICLE BY AN OPTOMETRIST SHALL CONSTITUTE
28 UNPROFESSIONAL CONDUCT UNDER THE ACT OF JUNE 6, 1980 (P.L.197,
29 NO.57), KNOWN AS THE OPTOMETRIC PRACTICE AND LICENSURE ACT. A
30 VIOLATION OF THIS ARTICLE BY AN OPHTHALMOLOGIST SHALL CONSTITUTE

1 UNPROFESSIONAL CONDUCT UNDER THE ACT OF DECEMBER 20, 1985
2 (P.L.457, NO.112), KNOWN AS THE MEDICAL PRACTICE ACT OF 1985, OR
3 THE ACT OF OCTOBER 5, 1978 (P.L.1109, NO.261), KNOWN AS THE
4 OSTEOPATHIC MEDICAL PRACTICE ACT.

5 Section 2706. Regulations.

6 The department may promulgate regulations as may be necessary
7 or appropriate to implement this article.

8 Section 2707. Applicability.

9 This ~~act~~ ARTICLE shall apply as follows: <--

10 (1) For health insurance policies for which either rates
11 or forms are required to be filed with THE Federal Government <--
12 or the ~~Insurance Department~~ DEPARTMENT, this ~~act~~ ARTICLE <--
13 shall apply to any policy for which a form or rate is first
14 filed on or after the effective date of this section.

15 (2) For health insurance policies for which neither
16 rates nor forms are required to be filed with the Federal
17 Government or the ~~Insurance Department~~ DEPARTMENT, this ~~act~~ <--
18 ARTICLE shall apply to any policy issued or renewed on or <--
19 after 180 days after the effective date of this section.

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