

AMENDMENTS TO HOUSE BILL NO. 1664

Sponsor: SENATOR DiSANTO

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1 Amend Bill, page 1, line 3, by inserting after "choice"
2 and for electronic notice of insurance practices; and imposing
3 penalties

4 Amend Bill, page 1, line 7, by striking out "a chapter" and
5 inserting
6 chapters

7 Amend Bill, page 2, by inserting between lines 3 and 4

8 "Covered person." A policyholder, subscriber or other
9 individual who is entitled to receive health care services under
10 a health insurance policy.

11 Amend Bill, page 3, lines 5 through 30; pages 4 and 5, lines
12 1 through 30; page 6, lines 1 through 20; by striking out all of
13 said lines on said pages and inserting

14 "Electronic funds transfer." A payment of any method of
15 electronic funds transfer as codified in 45 CFR 162.1601
16 (relating to health care electronic funds transfers (EFT) and
17 remittance advice transaction) and 162.1602 (relating to
18 standards for health care electronic funds transfers (EFT) and
19 remittance advice transaction).

20 "Health care provider." A licensed hospital or health care
21 facility, medical equipment supplier or person who is licensed,
22 certified or otherwise regulated to provide health care services
23 under the laws of this Commonwealth, including a physician,
24 podiatrist, optometrist, psychologist, physical therapist,
25 certified nurse practitioner, registered nurse, nurse midwife,
26 physician's assistant, chiropractor, dentist, pharmacist or an
27 individual accredited or certified to provide behavioral health
28 services. The term includes an individual providing emergency
29 services under a licensed emergency medical services agency as
30 defined in 35 Pa.C.S. § 8103 (relating to definitions).

31 "Health care service." A covered treatment, admission,
32 procedure, medical supplies and equipment or other service,
33 including behavioral health, prescribed or otherwise provided or

1 proposed to be provided by a health care provider to a covered
2 person for the diagnosis, prevention, treatment, cure or relief
3 of a health condition, illness, injury or disease under the
4 terms of health insurance policy.

5 "Health insurance policy." A policy, subscriber contract,
6 certificate or plan issued by an insurer that provides medical
7 or health care coverage, including a dental insurance policy.

8 The term does not include any of the following:

9 (1) An accident only policy.

10 (2) A credit only policy.

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

12 (4) A specified disease policy.

13 (5) A Medicare supplement policy.

14 (6) A TRICARE policy, including a Civilian Health and
15 Medical Program of the Uniformed Services (CHAMPUS)
16 supplement policy.

17 (7) A fixed indemnity policy.

18 (8) A hospital indemnity policy.

19 (9) A workers' compensation policy.

20 (10) An automobile medical payment policy under 75
21 Pa.C.S. (relating to vehicles).

22 (11) A homeowner's insurance policy.

23 (12) Any other similar policies providing for limited
24 benefits.

25 "Health insurer." An entity, including a dental insurer,
26 that offers, issues or renews a health insurance policy that is
27 offered or governed under any of the following:

28 (1) The act of May 17, 1921 (P.L.682, No.284), known as
29 The Insurance Company Law of 1921, including section 630 and
30 Article XXIV.

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

33 (3) Chapter 61 (relating to hospital plan corporations).

34 (4) Chapter 63 (relating to professional health services
35 plan corporations).

36 "Merchant servicer." Any of the following, as defined in 26
37 U.S.C. § 6050W(b) (relating to returns relating to payments made
38 in settlement of payment card and third party network
39 transactions):

40 (1) A payment settlement entity.

41 (2) A merchant acquiring entity.

42 (3) A third-party settlement organization.

43 "Participating health care provider." A health care provider
44 that has entered into a contractual or operating relationship
45 with a health insurer to participate in one or more designated
46 networks of the health insurer and to provide health care
47 services to covered persons under the terms of the health
48 insurer's administrative policy.

49 § 4702. Payment.

50 (a) Payment.--A health insurer or its contracted vendor may
51 not restrict the method of payment to a dentist or participating

1 health care provider so that the exclusive payment method is a
2 credit card payment.

3 (b) Changing payment.--If initiating or changing payments to
4 a dentist or participating health care provider using electronic
5 funds transfer payments, including credit card payments, a
6 health insurer or its contracted vendor shall:

7 (1) Advise the health care provider of all available
8 payment methods.

9 (2) Notify the health care provider that fees imposed by
10 the health insurer or its contracted vendor may apply to
11 electronic funds transfer payments, including credit card
12 payments, and provide instructions and contact information so
13 that the health care provider may obtain the exact amount of
14 the fees. Fees charged by a financial institution or merchant
15 servicer chosen by the health care provider shall not be
16 included for the purposes of this paragraph.

17 (3) Provide clear instructions to the health care
18 provider for the process of selecting a payment method.

19 (4) Not charge a fee solely to transmit the payment to
20 the health care provider, unless the health care provider has
21 consented to the fee.

22 (c) Waiver prohibited.--The provisions of this section may
23 not be waived by contract, and any contractual clause in
24 conflict with the provisions of this section or that purport to
25 waive any requirements of this section are void.

26 § 4703. Regulations.

27 The department may promulgate regulations necessary to
28 implement this chapter.

29 § 4704. Enforcement.

30 (a) Penalties.--Upon satisfactory evidence of the violation
31 of this chapter by a health insurer or any other person, one or
32 more of the following penalties may be imposed at the
33 commissioner's discretion:

34 (1) A fine of not more than \$5,000 for each violation of
35 this chapter.

36 (2) A fine of not more than \$10,000 for each willful
37 violation of this chapter.

38 (b) Limitations.--

39 (1) Fines imposed against an individual insurer under
40 this chapter may not exceed \$500,000 in the aggregate during
41 a single calendar year.

42 (2) Fines imposed against any other person under this
43 chapter may not exceed \$100,000 in the aggregate during a
44 single calendar year.

45 (c) Additional remedies.--The enforcement remedies imposed
46 under this section are in addition to any other remedies or
47 penalties that may be imposed under any other applicable law of
48 this Commonwealth, including:

49 (1) The act of July 22, 1974 (P.L.589, No.205), known as
50 the Unfair Insurance Practices Act. Violations of this
51 chapter shall be deemed to be an unfair method of competition

1 and an unfair or deceptive act or practice under that act.

2 (2) The act of December 18, 1996 (P.L.1066, No.159),
3 known as the Accident and Health Filing Reform Act.

4 (3) The act of June 25, 1997 (P.L.295, No.29), known as
5 the Pennsylvania Health Care Insurance Portability Act.

6 (d) Administrative procedure.--The administrative provisions
7 of this section shall be subject to 2 Pa.C.S. Ch. 5 Subch. A
8 (relating to practice and procedure of Commonwealth agencies). A
9 party against whom penalties are assessed in an administrative
10 action may appeal to Commonwealth Court as provided in 2 Pa.C.S.
11 Ch. 7 Subch. A (relating to judicial review of Commonwealth
12 agency action).

13 CHAPTER 49

14 ELECTRONIC NOTICE OF INSURANCE PRACTICES

15 Sec.

16 4901. Scope of chapter.

17 4902. Definitions.

18 4903. Electronic delivery of insurance notices or documents.

19 4904. Changes in hardware or software requirements.

20 4905. Affect, validity and enforceability of insurance notices
21 or documents.

22 4906. Withdrawal of consent.

23 4907. Prior consent for electronic delivery of insurance
24 notices or documents.

25 4908. Alternative methods of delivery.

26 4909. Limitation on civil liability.

27 4910. Delivery of insurance policies and endorsements.

28 4911. Construction.

29 § 4901. Scope of chapter.

30 This chapter relates to electronic notice of insurance
31 practices.

32 § 4902. Definitions.

33 The following words and phrases when used in this chapter
34 shall have the meanings given to them in this section unless the
35 context clearly indicates otherwise:

36 "Covered person." An individual who is entitled to receive
37 health care services under a health benefit plan.

38 "Deliver by electronic means." Any of the following:

39 (1) The delivery to an email address at which a covered
40 person has consented to receive a notice or document from an
41 insurer.

42 (2) A post on an electronic network or website
43 accessible via the Internet, mobile device or application,
44 tablet or any other electronic device, including a separate
45 notice of the post by delivery to an email address at which a
46 covered person has consented to receive a notice or document
47 or by any other delivery method that has been consented by
48 the covered person, which contains the Internet address at
49 which the notice or document is posted. For purposes of this
50 definition, delivery shall be effective upon the post or
51 actual delivery of the separate notice of the post as

1 specified under this paragraph.

2 "ERISA." Employee Retirement Income Security Act of 1974
3 (Public Law 93-406, 88 Stat. 829).

4 "Health benefit plan." A policy, contract, certificate or
5 agreement entered into, offered by or issued by an insurer to
6 provide, deliver or arrange for, pay for or reimburse any of the
7 costs of health care services, including a vision or dental
8 benefit plan or a self-insured plan not subject to ERISA.

9 "Insurer." An insurance company, association or exchange or
10 any other entity subject to the jurisdiction of the department.

11 "Plan sponsor." A person or entity who establishes, adopts
12 or maintains a health benefit plan on behalf of a covered
13 person.

14 § 4903. Electronic delivery of insurance notices or documents.

15 (a) Transactions.--Subject to the requirements of this
16 section, an insurer may deliver by electronic means a notice to
17 a covered person or any document required by Federal or State
18 law in a transaction with the insurer or in a manner that serves
19 as evidence of insurance coverage in accordance with the act of
20 December 16, 1999 (P.L.971, No.69), known as the Electronic
21 Transactions Act.

22 (b) Effect of delivery.--The delivery of a notice or
23 document in accordance with this section shall be considered the
24 equivalent to and having the same effect as a delivery method
25 required by Federal or State law, including delivery by first
26 class mail, first class mail with postage prepaid, certified
27 mail, certificate of mail or certificate mailing.

28 (c) Consent from covered persons.--An insurer may deliver by
29 electronic means a notice or document to a covered person in
30 accordance with this section if all of the following apply:

31 (1) The covered person has affirmatively consented
32 electronically or confirmed consent electronically in a
33 manner that reasonably demonstrates that the covered person
34 can access information in the electronic form that will be
35 used for a notice or document delivered by electronic means,
36 and the covered person has not withdrawn the consent.

37 (2) Before the covered person gives the consent required
38 under paragraph (1), the insurer provides the covered person
39 with a clear and conspicuous statement informing the covered
40 person of all of the following:

41 (i) The hardware and software requirements for
42 access to and retention of a notice or document delivered
43 by electronic means.

44 (ii) The types of notices and documents for which
45 the covered person may consent to receive by delivery by
46 electronic means.

47 (iii) The right of the covered person to withdraw
48 consent to having a notice or document delivered by
49 electronic means at any time and the conditions or
50 consequences imposed in the event consent is withdrawn.

51 (iv) The procedures necessary for the covered person

1 to withdraw consent to having a notice or document
2 delivered by electronic means, which shall be no more
3 burdensome than the procedures required to provide
4 consent under paragraph (1), and the manner in which the
5 covered person can update the covered person's email
6 address for the purposes of this subsection.

7 (v) The right of a covered person to have a notice
8 or document delivered by the insurer upon request in
9 paper form.

10 (vi) The right of a covered person to request
11 personal health information to be treated and
12 communicated confidentially and the process by which a
13 covered person may receive confidential communication of
14 personal health information delivered by electronic
15 means.

16 (d) Consent from plan sponsors.--A plan sponsor may, on
17 behalf of each covered person, provide consent to the delivery
18 by electronic means of communications related to the plan from
19 an insurer.

20 (e) Duties of plan sponsors.--Before consenting on behalf of
21 a covered person under subsection (d), a plan sponsor shall have
22 the following duties:

23 (1) To the extent applicable, confirm that the covered
24 person routinely uses electronic communications during the
25 normal course of employment and is able to access and retain
26 electronic communications that may be delivered by an insurer
27 to a personal email address used by a covered person.

28 (2) Inform the covered person that the consent will be
29 provided and a notice or document related to the health
30 benefit plan may be delivered by electronic means unless the
31 covered person affirmatively opts out of delivery by
32 electronic means or provides an alternative email address.

33 (f) Duties of insurers for health benefit plans.--Before
34 providing delivery by electronic means of a notice or document
35 related to a health insurance plan, an insurer for the plan
36 shall have the following duties:

37 (1) Provide a clear and conspicuous statement informing
38 a covered person enrolled in the plan of all of the
39 following:

40 (i) The types of notices and documents that may be
41 delivered by electronic means to the covered person.

42 (ii) The right of the covered person to withdraw
43 consent to having a notice or document delivered by
44 electronic means at any time without charge.

45 (iii) The procedures necessary for the covered
46 person to withdraw consent to having a notice or document
47 delivered by electronic means and the manner in which the
48 covered person can update the covered person's email
49 address for the purposes of this subsection.

50 (iv) The right of the covered person to have a
51 notice or document delivered by the insurer upon request

1 in paper form without charge.

2 (2) Provide an opportunity for a covered person enrolled
3 in the plan to opt out of delivery by electronic means.

4 (3) Certify that the insurer is complying with the
5 applicable provisions of this chapter, the Electronic
6 Transactions Act, 45 CFR 164.530(c) (relating to
7 administrative requirements) and other applicable provisions
8 of Federal law regarding technical safeguards such as
9 encryption.

10 § 4904. Changes in hardware or software requirements.

11 After a covered person provides consent in accordance with
12 section 4903 (relating to electronic delivery of insurance
13 notices or documents), if a change in the hardware or software
14 requirements necessary to access or retain a notice or document
15 to be delivered by electronic means creates a material risk such
16 that the covered person will not be able to access or retain the
17 notice or document for which the consent applies, an insurer may
18 not deliver by electronic means a notice or document to the
19 covered person unless the insurer complies with the requirements
20 of section 4903 and provides the covered person with a statement
21 that describes all of the following:

22 (1) The revised hardware and software requirements for
23 access to and retention of a document delivered by electronic
24 means.

25 (2) The right of the covered person to withdraw consent
26 without the imposition of a condition or consequence that was
27 not disclosed at the time of initial consent.

28 § 4905. Affect, validity and enforceability of insurance
29 notices or documents.

30 (a) Content of notices or documents.--Nothing in this
31 chapter shall be construed to affect requirements related to
32 content of an insurance notice or document or the timing related
33 to the notice or document required under any other provision of
34 Federal or State law.

35 (b) Confirmation receipts.--If any other applicable Federal
36 or State law requires confirmation of the receipt of a notice or
37 document from a covered person or plan sponsor of a health
38 benefit plan, an insurer shall only deliver by electronic means
39 a notice or document if the method for delivery provides for an
40 active confirmation receipt by the covered person or plan
41 sponsor.

42 (c) Prior consent.--This chapter shall not apply to a notice
43 or document delivered by electronic means by an insurer before
44 the effective date of this subsection to a covered person who,
45 prior to the effective date of this subsection, provided consent
46 to the insurer to receive a notice or document delivered by
47 electronic means from the insurer.

48 (d) Validity or enforceability.--The validity or
49 enforceability of a contract or policy of an insurer executed by
50 a covered person shall not be denied solely because of the
51 failure of the insurer to obtain electronic consent or

1 confirmation of consent of the covered person in accordance with
2 this chapter if the notice or document is delivered in paper
3 form.

4 § 4906. Withdrawal of consent.

5 (a) Procedures.--No later than 30 days after the effective
6 date of this subsection, an insurer shall develop procedures by
7 which a covered person may withdraw consent to receive a notice
8 or documents delivered by electronic means.

9 (b) Legality.--Withdrawal of consent by a covered person to
10 receive a notice or document delivered by electronic means from
11 an insurer shall not affect the legality or enforceability of a
12 notice or document delivered by electronic means to the covered
13 person before the withdrawal of consent takes effect.

14 (c) Effect.--Withdrawal of consent by a covered person to
15 receive a notice or document delivered by electronic means from
16 an insurer shall take effect within a reasonable period of time
17 after the insurer receives notice of the covered person's
18 withdrawal.

19 (d) Noncompliance.--Failure by an insurer to comply with any
20 provision of section 4903 (relating to electronic delivery of
21 insurance notices or documents) or 4904 (relating to changes in
22 hardware or software requirements) may be treated at the
23 election of a covered person as a withdrawal of consent for
24 purposes of this chapter.

25 § 4907. Prior consent for electronic delivery of insurance
26 notices or documents.

27 If an insurer has a documented record from a covered person
28 indicating approval by the covered person for a notice or
29 document to be delivered by electronic means from the insurer
30 before the effective date of this section and the insurer
31 intends to deliver by electronic means an additional notice or
32 document under this chapter, prior to providing the additional
33 notice or document for delivery by electronic means, the insurer
34 shall comply with sections 4903 (relating to electronic delivery
35 of insurance notices or documents) and 4904 (relating to changes
36 in hardware or software requirements) and provide the covered
37 person with a statement that describes the following:

38 (1) A list of each notice or document that will be
39 delivered by electronic means that was not previously
40 delivered by electronic means.

41 (2) The covered person's right to withdraw consent for
42 the delivery by electronic means of a notice or document
43 without imposition of a condition or consequence that was not
44 previously disclosed to the covered person.

45 § 4908. Alternative methods of delivery.

46 (a) Alternative methods.--An insurer shall deliver a notice
47 or document to a covered person by any other method that was
48 authorized by Federal or State law before the effective date of
49 this subsection other than delivery by electronic means if
50 either of the following occurs:

51 (1) The insurer attempts to deliver the notice or

1 document by electronic means and has a reasonable basis for
2 believing that the notice or document has not been received
3 by the covered person.

4 (2) The insurer becomes aware that the email address
5 provided by the covered person to the insurer is no longer
6 valid.

7 (b) Confidentiality.--Nothing in this chapter shall be
8 construed to preclude the ability of a covered person to request
9 confidential communication of the covered person's protected
10 health information as permitted by the Health Insurance
11 Portability and Accountability Act of 1996 (Public Law 104-191,
12 110 Stat. 1936).

13 (c) Construction.--Nothing in this chapter shall be
14 construed to preclude the ability of an insurer to deliver a
15 notice or document to a covered person by any method authorized
16 by Federal or State law.

17 § 4909. Limitation on civil liability.

18 An insurer shall not be civilly liable for any harm or injury
19 that occurs due to a covered person electing to receive a notice
20 or document for delivery by electronic means or due to any of
21 the following:

22 (1) The insurer's failure to deliver by electronic means
23 a notice or document if the insurer has a reasonable belief
24 that the covered person does not require an alternative
25 method of delivery under section 4908 (relating to
26 alternative methods of delivery).

27 (2) The covered person's failure to receive a notice or
28 document delivered by electronic means.
29 § 4910. Delivery of insurance policies and endorsements.

30 (a) Authorization.--An insurer may mail, deliver or, if the
31 insurer obtains a separate specific consent, post on the
32 insurer's publicly accessible Internet website an insurance
33 policy and endorsement that does not contain any personally
34 identifiable information.

35 (b) Internet website posting requirements.--If an insurer
36 elects to post an insurance policy and endorsement on the
37 insurer's publicly accessible Internet website, in lieu of
38 mailing or delivering the policy and endorsement to the plan
39 sponsor, the insurer shall have the following duties:

40 (1) The insurer shall ensure that the policy and
41 endorsement are accessible to the plan sponsor and producer
42 of record and remains accessible while the policy is in
43 effect.

44 (2) After the expiration of the policy, the insurer
45 shall do one of the following:

46 (i) Make the expired policy and endorsement
47 available upon request for a period of no less than five
48 years.

49 (ii) If the insurer continues to make the expired
50 policy or endorsement available on the insurer's publicly
51 accessible Internet website, keep the plan sponsor's user

1 identification active for a period of no less than five
2 years.

3 (c) Printable format.--If an insurer elects to post an
4 insurance policy and endorsement on the insurer's publicly
5 accessible Internet website in lieu of mailing or delivering the
6 policy and endorsement to the covered person, the insurer shall
7 post the policy and endorsement in a manner that enables the
8 plan sponsor and producer of record to print and save the policy
9 and endorsement using a program or application that is widely
10 available on the Internet and free to use.

11 (d) Description.--The insurer shall provide the following
12 information to the plan sponsor in or simultaneous with each
13 declaration page provided at the time of issuance of an initial
14 insurance policy and each renewal of the policy:

15 (1) A description of the exact policy and endorsement
16 form purchased by the plan sponsor.

17 (2) A description of the plan sponsor's right to receive
18 upon request and without charge an electronic or paper copy
19 of the policy and endorsement.

20 (3) The publicly accessible Internet website at which
21 the policy and endorsement are posted by the insurer.

22 (e) Paper copies.--Upon request by the plan sponsor, the
23 insurer shall mail a paper copy of the plan sponsor's insurance
24 policy and endorsement. The insurer shall mail the first paper
25 copy of the insurance policy and endorsement to the plan sponsor
26 without charge, but may impose a fee on each subsequent request
27 for a paper copy.

28 (f) Notice of change.--An insurer shall provide a notice,
29 via electronic means or in writing at the plan sponsor's option,
30 of all of the following to the plan sponsor:

31 (1) A change to the insurance policy and endorsement.

32 (2) The plan sponsor's right to obtain, upon request and
33 without charge after receipt of the initial copy, a paper
34 copy of the insurance policy and endorsement and the publicly
35 accessible Internet website at which the policy and
36 endorsement are posted.

37 (g) Construction.--Nothing in this section shall be
38 construed to affect or change any of the following pertaining to
39 the time or content of a disclosure or document required to be
40 provided to a plan sponsor under Federal or State law.
41 § 4911. Construction.

42 Nothing in this chapter shall be construed as a requirement
43 on health benefit plans subject to ERISA.

44 Section 2. This act shall apply to contracts offered,
45 entered, issued or renewed after the effective date of this
46 section.

47 Section 3. This act shall take effect in 60 days.