

AMENDMENTS TO HOUSE BILL NO. 1664

Sponsor: SENATOR DiSANTO

Printer's No. 3287

1 Amend Bill, page 2, line 9, by striking out "dental" and

2 inserting

3 health

4 Amend Bill, page 2, line 11, by striking out "dental" and

5 inserting

6 health care

7 Amend Bill, page 2, line 11, by striking out "dentist" and

8 inserting

9 health care provider

10 Amend Bill, page 2, line 12, by striking out "dentist" and

11 inserting

12 health care provider

13 Amend Bill, page 2, line 15, by striking out "dentist" and

14 inserting

15 health care provider

16 Amend Bill, page 2, lines 22 and 23, by striking out

17 "benefits plan" and inserting

18 insurance policy

19 Amend Bill, page 7, line 3, by inserting after "PHARMACIST"

20 , dentist

21 Amend Bill, page 7, line 16, by striking out "AN" and

22 inserting

23 a health

24 Amend Bill, page 9, line 1, by striking out "DENTIST OR"

1 Amend Bill, page 9, line 5, by striking out "DENTIST OR"

2 Amend Bill, page 11, lines 5 through 30; pages 12 through 21,
3 lines 1 through 30; page 22, lines 1 through 11; by striking out
4 all of said lines on said pages and inserting

5 CHAPTER 49

6 ELECTRONIC NOTICE OF INSURANCE PRACTICES

7 Sec.

8 4901. Scope of chapter.

9 4902. Definitions.

10 4903. Electronic delivery of insurance notices or documents.

11 4904. Changes in hardware or software requirements.

12 4905. Affect, validity and enforceability of insurance notices
13 or documents.

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15 4907. Prior consent for electronic delivery of insurance
16 notices or documents.

17 4908. Alternative methods of delivery.

18 4909. Limitation on civil liability.

19 4910. Delivery of insurance policies and endorsements.

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23 § 4901. Scope of chapter.

24 This chapter relates to electronic notice of insurance
25 practices.

26 § 4902. Definitions.

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

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

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

33 (1) The delivery to an email address at which a covered
34 person has consented to receive a notice or document from an
35 insurer.

36 (2) A post on an electronic network or website
37 accessible via the Internet, mobile device or application,
38 tablet or any other electronic device, administered by an
39 insurer, including a separate notice of the post by delivery
40 to an email address at which a covered person has consented
41 to receive a notice or document or by any other delivery
42 method that has been consented by the covered person, which
43 contains the Internet address at which the notice or document
44 is posted. For purposes of this definition, delivery shall be
45 effective upon the post or actual delivery of the separate
46 notice of the post as specified under this paragraph.

47 "ERISA." Employee Retirement Income Security Act of 1974

1 (Public Law 93-406, 88 Stat. 829).

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

7 "Health insurer." An entity licensed by the department with
8 authority to issue a health benefit plan that is governed under
9 any of the following:

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

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

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

16 (4) Chapter 63 (relating to professional health services
17 plan corporations).

18 "Plan sponsor." A person or entity that establishes, adopts
19 or maintains a health benefit plan on behalf of a covered
20 person.

21 § 4903. Electronic delivery of insurance notices or documents.

22 (a) Transactions.--Subject to the requirements of this
23 section, an insurer may deliver by electronic means a notice to
24 a covered person or any document required by Federal or State
25 law in a transaction with the insurer that serves as evidence of
26 insurance coverage in accordance with the act of December 16,
27 1999 (P.L.971, No.69), known as the Electronic Transactions Act.

28 (b) Effect of delivery.--The delivery of a notice or
29 document in accordance with this section shall be considered the
30 equivalent to and having the same effect as a delivery method
31 required by Federal or State law, including delivery by first
32 class mail, first class mail with postage prepaid, certified
33 mail, certificate of mail or certificate mailing.

34 (c) Consent from covered persons.--Notwithstanding
35 subsection (d), an insurer may deliver by electronic means a
36 notice or document to a covered person in accordance with this
37 section if all of the following apply:

38 (1) The covered person has affirmatively consented
39 electronically or confirmed consent electronically in a
40 manner that reasonably demonstrates that the covered person
41 can access information in the electronic form that will be
42 used for a notice or document delivered by electronic means,
43 and the covered person has not withdrawn the consent.

44 (2) Before the covered person gives the consent required
45 under paragraph (1), the insurer provides the covered person
46 with a clear and conspicuous statement informing the covered
47 person of all of the following:

48 (i) The hardware and software requirements for
49 access to and retention of a notice or document delivered
50 by electronic means.

51 (ii) The types of notices and documents for which

1 the covered person may consent to receive by delivery by
2 electronic means.

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

7 (iv) The procedures necessary for the covered person
8 to withdraw consent to having a notice or document
9 delivered by electronic means, which shall be no more
10 burdensome than the procedures required to provide
11 consent under paragraph (1), and the manner in which the
12 covered person can update the covered person's email
13 address for the purposes of this subsection.

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

17 (vi) The right of a covered person to request that
18 personal health information be treated and communicated
19 confidentially and the process by which a covered person
20 may receive confidential communication of personal health
21 information delivered by electronic means.

22 (d) Consent from plan sponsors.--A plan sponsor may, on
23 behalf of each covered person, provide consent to the delivery
24 by electronic means of communications related to the plan from
25 an insurer.

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

29 (1) To the extent applicable, confirm that the covered
30 person routinely uses electronic communications and is able
31 to access and retain electronic communications that may be
32 delivered by an insurer to an email address used by a covered
33 person.

34 (2) Inform the covered person no less than 30 days prior
35 that consent will be provided as authorized under subsection
36 (d) and a notice or document related to the health benefit
37 plan may be delivered by electronic means unless the covered
38 person affirmatively opts out of delivery by electronic means
39 prior to the expiration of the 30-day period.

40 (f) Duties of insurers for health benefit plans.--At least
41 30 days before providing delivery by electronic means of a
42 notice or document related to a health benefit plan, an insurer
43 for the plan shall have the following duties:

44 (1) Verify that the plan sponsor has met its duties
45 under subsection (e).

46 (2) Provide a clear and conspicuous statement informing
47 a covered person enrolled in the plan of all of the
48 following:

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

51 (ii) The right of the covered person to opt out of

1 having a notice or document delivered by electronic means
2 at any time without charge.

3 (iii) The procedures necessary for the covered
4 person to opt out of having a notice or document
5 delivered by electronic means and the manner in which the
6 covered person can update the covered person's email
7 address for the purposes of this subsection.

8 (iv) The right of the covered person to have a
9 notice or document delivered by the insurer upon request
10 in paper form without charge.

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

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

18 (3) Comply with the applicable provisions of this
19 chapter, the Electronic Transactions Act, 45 CFR 164.530(c)
20 (relating to administrative requirements) and other
21 applicable provisions of Federal law regarding technical
22 safeguards such as encryption.

23 § 4904. Changes in hardware or software requirements.

24 After a covered person or plan sponsor provides consent in
25 accordance with section 4903 (relating to electronic delivery of
26 insurance notices or documents), if a change in the hardware or
27 software requirements necessary to access or retain a notice or
28 document to be delivered by electronic means creates a material
29 risk such that the covered person will not be able to access or
30 retain the notice or document for which the consent applies, an
31 insurer may not deliver by electronic means a notice or document
32 to the covered person unless the insurer complies with the
33 requirements of section 4903 and provides the covered person
34 with a statement that describes all of the following:

35 (1) The revised hardware and software requirements for
36 access to and retention of a document delivered by electronic
37 means.

38 (2) The right of the covered person to opt out of
39 delivery by electronic means without the imposition of a
40 condition or consequence that was not disclosed at the time
41 of initial consent.

42 § 4905. Affect, validity and enforceability of insurance
43 notices or documents.

44 (a) Content of notices or documents.--Nothing in this
45 chapter shall be construed to affect requirements related to
46 content of an insurance notice or document or the timing related
47 to the notice or document required under any other provision of
48 Federal or State law.

49 (b) Confirmation receipts.--If any other applicable Federal
50 or State law requires confirmation of the receipt of a notice or
51 document from a covered person or plan sponsor of a health

1 benefit plan, an insurer shall only deliver by electronic means
2 a notice or document if the method for delivery provides for an
3 active confirmation receipt by the covered person or plan
4 sponsor.

5 (c) Prior consent.--This chapter shall not apply to a notice
6 or document delivered by electronic means by an insurer before
7 the effective date of this subsection to a covered person who,
8 prior to the effective date of this subsection, provided consent
9 to the insurer to receive a notice or document delivered by
10 electronic means from the insurer.

11 (d) Validity or enforceability.--The validity or
12 enforceability of a contract or policy of an insurer executed by
13 a covered person shall not be denied solely because of the
14 failure of the insurer to obtain electronic consent or
15 confirmation of consent of the covered person in accordance with
16 this chapter if the notice or document is delivered in paper
17 form.

18 § 4906. Rescission of delivery by electronic means.

19 (a) Procedures.--No later than 30 days after the effective
20 date of this subsection, an insurer shall develop procedures by
21 which a covered person may opt out of delivery by electronic
22 means.

23 (b) Legality.--The decision by a covered person to opt out
24 of delivery by electronic means shall not affect the legality or
25 enforceability of a notice or document delivered by electronic
26 means to the covered person before the decision takes effect.

27 (c) Effect.--The decision by a covered person to opt out of
28 delivery by electronic means shall take effect no later than 30
29 days after the insurer receives notice of the covered person's
30 decision.

31 § 4907. Prior consent for electronic delivery of insurance
32 notices or documents.

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

44 (1) A list of each notice or document that will be
45 delivered by electronic means that was not previously
46 delivered by electronic means.

47 (2) The covered person's right to opt out of delivery by
48 electronic means without imposition of a condition or
49 consequence that was not previously disclosed to the covered
50 person.

51 § 4908. Alternative methods of delivery.

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

6 (1) The insurer attempts to deliver the notice or
7 document by electronic means and has a reasonable basis for
8 believing that the notice or document has not been received
9 by the covered person.

10 (2) The insurer becomes aware that the email address
11 provided by the covered person to the insurer is no longer
12 valid.

13 (b) Confidentiality.--Nothing in this chapter shall be
14 construed to preclude the ability of a covered person to request
15 confidential communication of the covered person's protected
16 health information as permitted by the Health Insurance
17 Portability and Accountability Act of 1996 (Public Law 104-191,
18 110 Stat. 1936).

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

23 § 4909. Limitation on civil liability.

24 An insurer or plan sponsor shall not be civilly liable under
25 this chapter.

26 § 4910. Delivery of insurance policies and endorsements.

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

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

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

41 (2) After the expiration of the policy, the insurer
42 shall do one of the following:

43 (i) Make the expired policy and endorsement
44 available upon request for a period of no less than five
45 years.

46 (ii) If the insurer continues to make the expired
47 policy or endorsement available on the insurer's publicly
48 accessible Internet website, keep the plan sponsor's user
49 identification active for a period of not less than five
50 years.

51 (c) Printable format.--If an insurer elects to post an

1 insurance policy and endorsement on the insurer's publicly
2 accessible Internet website in lieu of mailing or delivering the
3 policy and endorsement to the covered person, the insurer shall
4 post the policy and endorsement in a manner that enables the
5 plan sponsor and producer of record to print and save the policy
6 and endorsement using a program or application that is widely
7 available on the Internet and free to use.

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

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

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

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

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

25 § 4911. Construction.

26 (a) Applicability.--Nothing in this chapter shall apply to
27 self-insured health benefit plans subject to ERISA or exempted
28 from ERISA under section 4(b) of ERISA.

29 (b) Content and timing of notices.--Nothing in this chapter
30 shall be construed to affect or change the time or content of a
31 disclosure or document required to be provided to a plan sponsor
32 under Federal or State law.

33 § 4912. Regulations.

34 The department may promulgate any necessary or appropriate
35 regulations to effectuate this chapter.

36 § 4913. Violations.

37 Failure to comply with the requirements of this chapter shall
38 be deemed an unfair insurance practice under the act of July 22,
39 1974 (P.L.589, No.205), known as the Unfair Insurance Practices
40 Act.