

---

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

SENATE BILL

No. 311 Session of  
2019

---

INTRODUCED BY COSTA, FONTANA, FARNESE AND L. WILLIAMS,  
FEBRUARY 26, 2019

---

REFERRED TO BANKING AND INSURANCE, FEBRUARY 26, 2019

---

AN ACT

1 Requiring physician practices operating as part of an integrated  
2 delivery network to meet certain requirements to ensure  
3 patient access and consumer choice; imposing powers and  
4 duties on the Insurance Department; and imposing penalties.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Patient  
9 Access and Consumer Choice Act.

10 Section 2. Legislative findings.

11 The General Assembly finds and declares as follows:

12 (1) Beginning in the 1990s, a new trend in hospital  
13 mergers and consolidations began, and public sources  
14 currently estimate that there have been over 300 such  
15 hospital mergers since 2007.

16 (2) These hospitals consolidate and merge by affiliating  
17 with other independent hospitals or purchasing independent  
18 physician practices, or both.

19 (3) Hospital and physician consolidation has the

1 potential to increase the cost of health care to consumers by  
2 limiting competition and thereby giving hospitals and  
3 physician practices greater negotiating strength, resulting  
4 in higher prices for patients and little incentive to improve  
5 the quality of care delivered.

6 (4) Research conducted by government agencies, academics  
7 and others concludes that increasing provider consolidation  
8 has the potential to increase health care costs.

9 (5) The Commonwealth has a duty to protect consumer  
10 interests.

11 (6) Hospitals and physician practices that also operate  
12 as an integrated delivery network are able to exert  
13 additional market dominance as they can set rates for both  
14 payment and reimbursement.

15 (7) To ensure that physician practices operating as part  
16 of an integrated delivery network are not permitted to use  
17 their market dominance to exert undue pressure on health  
18 insurance providers or to restrict a patient's access, a  
19 requirement must be imposed that all physician practices  
20 operating as part of an integrated delivery network contract  
21 with any willing health insurance provider.

## 22 Section 3. Definitions.

23 The following words and phrases when used in this act shall  
24 have the meanings given to them in this section unless the  
25 context clearly indicates otherwise:

26 "Default provider agreement." An agreement between a  
27 hospital-owned physician practice that is part of an integrated  
28 delivery network and a willing health insurance carrier to  
29 provide health care services, which agreement is imposed upon  
30 the parties in the event that they fail to enter into a mutually

1 agreeable provider contract within the time frames established  
2 by this act.

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

4 "Health care services." Any medical-surgical, hospital,  
5 facility or ancillary service provided to an individual.

6 "Health insurance carrier." An entity licensed in this  
7 Commonwealth to issue health insurance, subscriber contracts,  
8 certifications or plans that provide medical or health care  
9 coverage by a health care facility or licensed health care  
10 provider that is offered or governed under the act of May 17,  
11 1921 (P.L.682, No.284), known as The Insurance Company Law of  
12 1921, including section 630 and Article XXIV thereof, or any of  
13 the following:

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

16 (2) The act of May 18, 1976 (P.L.123, No.54), known as  
17 the Individual Accident and Sickness Insurance Minimum  
18 Standards Act.

19 (3) 40 Pa.C.S. Chs. 61 (relating to hospital plan  
20 corporations) and 63 (relating to professional health  
21 services plan corporations).

22 "Hospital-owned physician practice." A physician practice  
23 that meets both of the following:

24 (1) Provides health care services or other professional  
25 medical services to an individual.

26 (2) Is any of the following:

27 (i) Owned or operated by a hospital.

28 (ii) Under joint control of a hospital.

29 (iii) A subsidiary of a hospital.

30 "Integrated delivery network." One or more entities with

1 common ownership, operation or control, which include both of  
2 the following:

3 (1) One or more hospitals, one or more physician  
4 practices or one or more health care providers, or any  
5 combination thereof, offering health care services.

6 (2) One or more entities operating as a health insurance  
7 carrier offering health insurance, administering health  
8 benefits, operating a health maintenance organization or  
9 offering other health care benefits and coverage to employers  
10 or individuals in this Commonwealth.

11 "Provider contract." A written agreement that meets both of  
12 the following:

13 (1) Is for the payment or reimbursement of health care  
14 services provided to any individual by a hospital-owned  
15 physician practice that is part of an integrated delivery  
16 network or any other entity directly or indirectly owned,  
17 operated or controlled by or otherwise affiliated with the  
18 integrated delivery network.

19 (2) Is between both of the following:

20 (i) A hospital-owned physician practice that is part  
21 of an integrated delivery network or any entity directly  
22 or indirectly owned, operated or controlled by or  
23 otherwise affiliated with an integrated delivery network.

24 (ii) Any health insurance carrier.

25 Section 4. Responsibilities.

26 (a) General rule.--A hospital-owned physician practice that  
27 is part of an integrated delivery network shall comply with the  
28 following:

29 (1) Assure availability and accessibility of adequate  
30 health care services to members of a health insurance

1 carrier, which allows access to quality care and continuity  
2 of health care services.

3 (2) Not engage in either of the following:

4 (i) Place restrictive covenants in its employment  
5 contracts that restrain any individual from engaging in  
6 the individual's lawful profession.

7 (ii) Limit or restrict a consumer's access to care  
8 or limit or restrict a consumer's access to continuity of  
9 care solely on the basis of the consumer's health  
10 insurance carrier.

11 (3) Enter into a provider contract with any health  
12 insurance carrier for health care services.

13 (b) Effect of failure to maintain or enter into a mutually  
14 agreeable provider contract.--

15 (1) Failure of any hospital-owned physician practice  
16 that is part of an integrated delivery network and the  
17 willing health insurance carrier to maintain a mutually  
18 agreeable provider contract shall result in the parties  
19 entering into a default provider agreement for health care  
20 services while they submit to mandatory binding arbitration.  
21 The default provider agreement shall set forth payment terms,  
22 while all other contractual terms of the previously executed  
23 contract shall remain in effect until the arbitration process  
24 is completed. The arbitrator shall establish all terms of the  
25 new provider contract.

26 (2) Failure of any newly affiliated hospital-owned  
27 physician practice that is part of an existing integrated  
28 delivery network or the failure of any hospital-owned  
29 physician practice that is part of a newly formed integrated  
30 delivery network and a willing health insurance carrier to

1 enter into a mutually agreeable provider contract within 90  
2 days of affiliation or formation shall result in the parties  
3 entering into immediate mandatory binding arbitration. The  
4 arbitrator shall establish all terms of the new provider  
5 contract.

6 (c) Arbitration.--The following shall apply to arbitration  
7 required under subsection (b) (2):

8 (1) A mutually agreeable arbitrator shall be chosen by  
9 the parties from the American Arbitration Association's  
10 National Healthcare Panel of arbitrators experienced in  
11 handling payor-provider disputes.

12 (2) All costs associated with the arbitration shall be  
13 split equally between the parties.

14 (3) The arbitrator shall conduct the arbitration  
15 pursuant to the American Arbitration Association's Healthcare  
16 Payor Provider Arbitration Rules.

17 (4) Contract terms and conditions shall be established  
18 as follows:

19 (i) Each party shall submit best and final contract  
20 terms to the arbitrator.

21 (ii) The arbitrator may request the production of  
22 documents, data and other information.

23 (iii) Payment terms and all other contractual  
24 provisions shall be established by the arbitrator.

25 (d) Term of default provider agreement.--The default  
26 provider agreement shall remain in effect until the arbitration  
27 process between the hospital-owned physician practice that is  
28 part of an integrated delivery network and a willing health  
29 insurance carrier is completed.

30 (e) Payment under the default provider agreement.--The

1 reimbursement rate that a health insurance carrier is required  
2 to pay shall be an amount equal to the greatest of the following  
3 possible amounts:

4 (1) The amount negotiated with in-network providers for  
5 the same services.

6 (2) The amount calculated by the same method the health  
7 insurance carrier generally uses to determine payments for  
8 out-of-network services, such as the usual, customary and  
9 reasonable charge.

10 (3) The amount that would be paid under Medicare for the  
11 same services.

12 (f) Prohibition.--A hospital-owned physician practice is  
13 prohibited from incorporating a termination provision within a  
14 provider contract with a health insurance carrier that allows  
15 for termination for anything other than willful breach.

16 (g) Copies of contracts.--Copies of all provider contracts  
17 between a hospital-owned physician practice that is part of an  
18 integrated delivery network and any health insurance carrier  
19 shall be provided to the department.

20 Section 5. Confidentiality.

21 Any provider contracts, documents, materials or  
22 information received by the department from a hospital-owned  
23 physician practice for the purpose of compliance with this  
24 act and any regulations developed under this act shall be  
25 confidential, subject to the following:

26 (1) The department may use the information obtained  
27 pursuant to the provisions of this act for the sole purpose  
28 of compliance with this act.

29 (2) Any provider contracts, documents, materials or  
30 information made confidential under this act shall not be

1 subject to requests under the act of February 14, 2008

2 (P.L.6, No.3), known as the Right-to-Know Law.

3 Section 6. Enforcement.

4 (a) General rule.--The department shall ensure compliance  
5 with this act and shall investigate potential violations of this  
6 act based upon information received from health insurance  
7 carriers, hospital-owned physician practices, enrollees and  
8 other sources.

9 (b) Regulations.--The department shall promulgate such  
10 regulations as may be necessary to carry out the provisions of  
11 this act.

12 Section 7. Civil penalties.

13 The department may impose a civil penalty of not more than  
14 \$25,000 per day, not to exceed \$1,000,000 per calendar year, on  
15 a hospital-owned physician practice that is part of an  
16 integrated delivery network for a violation of this act.

17 Section 8. Effective date.

18 This act shall take effect in 90 days.