

LEGISLATIVE REFERENCE BUREAU

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Legislative Reference Bureau

An Act amending Title 40
(Insurance) of the Pennsylvania
Consolidated Statutes, providing
for electronic notice of
insurance practices.

INTRODUCED _____

By DiSanto, John District
NO. _____

By _____ District
NO. _____

By _____ District
NO. _____

By _____ District
NO. _____

See next page for additional co-sponsors.

Prior Session _____

Referred to Committee on

Date _____

Reported _____

As Committed-Amended

Recomendation

By Hon. _____

AN ACT

1 Amending Title 40 (Insurance) of the Pennsylvania Consolidated
2 Statutes, providing for electronic notice of insurance
3 practices.

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

6 Section 1. Title 40 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 47

9 ELECTRONIC NOTICE OF INSURANCE PRACTICES

10 Sec.

11 4701. Scope of chapter.

12 4702. Definitions.

13 4703. Electronic delivery of insurance notices or documents.

14 4704. Changes in hardware or software requirements.

15 4705. Affect, validity and enforceability of insurance notices
16 or documents.

17 4706. Withdrawal of consent.

18 4707. Prior consent for electronic delivery of insurance

1 notices or documents.

2 4708. Alternative methods of delivery.

3 4709. Limitation on civil liability.

4 4710. Delivery of insurance policies and endorsements.

5 4711. Receipt of claim payments by electronic transfer.

6 4712. Regulations.

7 § 4701. Scope of chapter.

8 This chapter relates to electronic notice of insurance
9 practices.

10 § 4702. Definitions.

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

14 "Covered person." A policyholder, subscriber or other
15 individual who is entitled to receive health care services under
16 a health benefit plan.

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

18 (1) The delivery to an email address at which a party
19 has consented to receive a notice or document from an
20 insurer.

21 (2) A post on an electronic network or website
22 accessible via the Internet, mobile device or application,
23 tablet or any other electronic device, including a separate
24 notice of the post by delivery to an email address at which a
25 party has consented to receive a notice or document or by any
26 other delivery method that has been consented by the party,
27 which contains the Internet address at which the notice or
28 document is posted. For purposes of this definition, delivery
29 shall be effective upon the post or actual delivery of the
30 separate notice of the post as specified under this

1 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 "Party." The recipient of a notice or document required as
12 part of an insurance transaction, including an applicant, an
13 insured, a policy holder, a covered person or an annuity
14 contract holder.

15 "Plan sponsor." A person, other than a regulated entity, who
16 establishes, adopts or maintains a health benefit plan that
17 covers residents of this Commonwealth, including a plan
18 established, adopted or maintained by an employer or jointly by
19 an employer and an employee organization, association,
20 committee, joint board of trustees or any similar group of
21 representatives who adopt or maintain a health benefit plan.

22 § 4703. Electronic delivery of insurance notices or documents.

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

30 (b) Effect of delivery.--The delivery of a notice or

1 document in accordance with this section shall be considered the
2 equivalent to and having the same effect as a delivery method
3 required by Federal or State law, including delivery by first
4 class mail, first class mail with postage prepaid, certified
5 mail, certificate of mail or certificate mailing.

6 (c) Consent from parties.--An insurer may deliver by
7 electronic means a notice or document to a party in accordance
8 with this section if all of the following apply:

9 (1) The party has affirmatively consented electronically
10 or confirmed consent electronically in a manner that
11 reasonably demonstrates that the party can access information
12 in the electronic form that will be used for a notice or
13 document delivered by electronic means, and the party has not
14 withdrawn the consent.

15 (2) Before the party gives the consent required under
16 paragraph (1), the insurer provides the party with a clear
17 and conspicuous statement informing the party of all of the
18 following:

19 (i) The hardware and software requirements for
20 access to and retention of a notice or document delivered
21 by electronic means.

22 (ii) The types of notices and documents for which
23 the party may consent to receive by delivery by
24 electronic means.

25 (iii) The right of the party to withdraw consent to
26 having a notice or document delivered by electronic means
27 at any time and the conditions or consequences imposed in
28 the event consent is withdrawn.

29 (iv) The procedures necessary for the party to
30 withdraw consent to having a notice or document delivered

1 by electronic means, which shall be no more burdensome
2 than the procedures required to provide consent under
3 paragraph (1), and the manner in which the party can
4 update the party's email address for the purposes of this
5 subsection.

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

9 (d) Consent from plan sponsors.--A plan sponsor of a health
10 benefit plan may, on behalf of each covered person enrolled in
11 the plan, provide consent to the delivery by electronic means of
12 communications related to the plan from an insurer.

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

16 (1) To the extent applicable, confirm that the covered
17 person routinely uses electronic communications during the
18 normal course of employment and is able to access and retain
19 electronic communications that may be delivered by an
20 insurer.

21 (2) Inform the covered person that the consent will be
22 provided and a notice or document related to the health
23 benefit plan may be delivered by electronic means unless the
24 covered person affirmatively opts out of delivery by
25 electronic means or provides an alternative email address.

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

30 (1) Provide a clear and conspicuous statement informing

1 a covered person enrolled in the plan of all of the
2 following:

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

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

8 (iii) The procedures necessary for the covered
9 person to withdraw consent to having a notice or document
10 delivered by electronic means and the manner in which the
11 covered person can update the party's email address for
12 the purposes of this subsection.

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

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

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

24 § 4704. Changes in hardware or software requirements.

25 After a party provides consent in accordance with section
26 4703 (relating to electronic delivery of insurance notices or
27 documents), if a change in the hardware or software requirements
28 necessary to access or retain a notice or document to be
29 delivered by electronic means creates a material risk that the
30 party will not be able to access or retain the notice or

1 document for which the consent applies, an insurer may not
2 deliver by electronic means a notice or document to the party
3 unless the insurer complies with the requirements of section
4 4703 and provides the party with a statement that describes all
5 of the following:

6 (1) The revised hardware and software requirements for
7 access to and retention of a document delivered by electronic
8 means.

9 (2) The right of the party to withdraw consent without
10 the imposition of a condition or consequence that was not
11 disclosed at the time of initial consent.

12 § 4705. Affect, validity and enforceability of insurance
13 notices or documents.

14 (a) Content of notices or documents.--Nothing in this
15 chapter shall be construed to affect requirements related to
16 content of an insurance notice or document or the timing related
17 to the notice or document required under any other provision of
18 Federal or State law.

19 (b) Confirmation receipts.--If any other applicable Federal
20 or State law requires confirmation of the receipt of a notice or
21 document from a party or plan sponsor of a health benefit plan,
22 an insurer shall only deliver by electronic means a notice or
23 document if the method for delivery provides for an active
24 confirmation receipt by the party or plan sponsor.

25 (c) Prior consent.--This chapter shall not apply to a notice
26 or document delivered by electronic means by an insurer before
27 the effective date of this subsection to a party who, prior to
28 the effective date of this subsection, provided consent to the
29 insurer to receive a notice or document delivered by electronic
30 means from the insurer.

1 (d) Validity or enforceability.--The validity or
2 enforceability of a contract or policy of an insurer executed by
3 a party shall not be denied solely because of the failure of the
4 insurer to obtain electronic consent or confirmation of consent
5 of the party in accordance with this chapter if the notice or
6 document is delivered in paper form.

7 § 4706. Withdrawal of consent.

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

12 (b) Legality.--Withdrawal of consent by a party to receive a
13 notice or document delivered by electronic means from an insurer
14 shall not affect the legality or enforceability of a notice or
15 document delivered by electronic means to the party before the
16 withdrawal of consent takes effect.

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

21 (d) Noncompliance.--Failure by an insurer to comply with any
22 provision of section 4703 (relating to electronic delivery of
23 insurance notices or documents) or 4704 (relating to changes in
24 hardware or software requirements) may be treated at the
25 election of a party as a withdrawal of consent for purposes of
26 this chapter.

27 § 4707. Prior consent for electronic delivery of insurance
28 notices or documents.

29 If an insurer has a documented record from a party indicating
30 approval by the party for a notice or document to be delivered

1 by electronic means from the insurer before the effective date
2 of this section and the insurer intends to deliver by electronic
3 means an additional notice or document under this chapter, prior
4 to providing the additional notice or document for delivery by
5 electronic means, the insurer shall comply with sections 4703
6 (relating to electronic delivery of insurance notices or
7 documents) and 4704 (relating to changes in hardware or software
8 requirements) and provide the party with a statement that
9 describes the following:

10 (1) A list of each notice or document that will be
11 delivered by electronic means that was not previously
12 delivered by electronic means.

13 (2) The party's right to withdraw consent for the
14 delivery by electronic means of a notice or document without
15 imposition of a condition or consequence that was not
16 previously disclosed to the party.

17 § 4708. Alternative methods of delivery.

18 (a) Alternative methods.--An insurer shall deliver a notice
19 or document to a party by any other method that was authorized
20 by Federal or State law before the effective date of this
21 subsection other than delivery by electronic means if either of
22 the following occurs:

23 (1) The insurer attempts to deliver the notice or
24 document by electronic means and has a reasonable basis for
25 believing that the notice or document has not been received
26 by the party.

27 (2) The insurer becomes aware that the email address
28 provided by the party to the insurer is no longer valid.

29 (b) Confidentiality.--Nothing in this chapter shall be
30 construed to preclude the ability of a party to request

1 confidential communication of the party's protected health
2 information as permitted by the Health Insurance Portability and
3 Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936).

4 (c) Construction.--Nothing in this chapter shall be
5 construed to preclude the ability of an insurer to deliver a
6 notice or document to a party by any method authorized by
7 Federal or State law.

8 § 4709. Limitation on civil liability.

9 An insurer shall not be civilly liable for any harm or injury
10 that occurs due to a party electing to receive a notice or
11 document for delivery by electronic means or due to any of the
12 following:

13 (1) The insurer's failure to deliver by electronic means
14 a notice or document if the insurer has a reasonable belief
15 that the party does not require an alternative method of
16 delivery under section 4708 (relating to alternative methods
17 of delivery).

18 (2) The party's failure to receive a notice or document
19 delivered by electronic means.

20 § 4710. Delivery of insurance policies and endorsements.

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

26 (b) Internet website posting requirements.--If an insurer
27 elects to post an insurance policy and endorsement on the
28 insurer's publicly accessible Internet website, in lieu of
29 mailing or delivering the policy and endorsement to the insured,
30 the insurer shall have the following duties:

1 (1) The insurer shall ensure that the policy and
2 endorsement are accessible to the insured and producer of
3 record and remains accessible while the policy is in effect.

4 (2) After the expiration of the policy, the insurer
5 shall do one of the following:

6 (i) Make the expired policy and endorsement
7 available upon request for a period of no less than five
8 years.

9 (ii) If the insurer continues to make the expired
10 policy or endorsement available on the insurer's publicly
11 accessible Internet website, keep the insured's user
12 identification active for a period of no less than five
13 years.

14 (c) Printable format.--If an insurer elects to post an
15 insurance policy and endorsement on the insurer's publicly
16 accessible Internet website in lieu of mailing or delivering the
17 policy and endorsement to the party, the insurer shall post the
18 policy and endorsement in a manner that enables the insured and
19 producer of record to print and save the policy and endorsement
20 using a program or application that is widely available on the
21 Internet and free to use.

22 (d) Description.--The insurer shall provide the following
23 information to the insured in or simultaneous with each
24 declaration page provided at the time of issuance of an initial
25 insurance policy and each renewal of the policy:

26 (1) A description of the exact policy and endorsement
27 form purchased by the insured.

28 (2) A description of the insured's right to receive upon
29 request and without charge an electronic or paper copy of the
30 policy and endorsement.

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

3 (e) Paper copies.--Upon request by an insured, the insurer
4 shall mail a paper copy of the insured's insurance policy and
5 endorsement. The insurer shall mail the first paper copy of the
6 insurance policy and endorsement to the insured without charge,
7 but may impose a fee on each subsequent request for a paper
8 copy.

9 (f) Notice of change.--An insurer shall provide a notice,
10 via electronic means or in writing at the insured's option, of
11 all of the following to the insured:

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

13 (2) The insured's right to obtain, upon request and
14 without charge after receipt of the initial copy, a paper
15 copy of the insurance policy and endorsement and the publicly
16 accessible Internet website at which the policy and
17 endorsement are posted.

18 (g) Construction.--Nothing in this section shall be
19 construed to affect or change any of the following pertaining to
20 the time or content of a disclosure or document required to be
21 provided to an insured under Federal or State law.

22 § 4711. Receipt of claim payments by electronic transfer.

23 (a) Claims.--Each claim by an insured, workers' compensation
24 claimant or third party against an insurer shall be paid by
25 check or draft of the insurer, or if offered by the insurer and
26 consented to by the claimant, by the electronic transfer of
27 funds to the claimant, to the claimant's legal representative or
28 to another person upon direction of the claimant in accordance
29 with the insurer's policies.

30 (b) Joint payments.--If an employer has advanced a payment

1 of a claim to a claimant under subsection (a), the insurer shall
2 pay the claim jointly by check or draft to the claimant and the
3 employer or, if consented by each party, by the electronic
4 transfer of funds to a trust account. The insurer shall pay the
5 claim jointly by check or draft until the amount of the advanced
6 claim payment has been recovered by the employer. The electronic
7 payment shall be held in trust until the amount of the advanced
8 claim payment has been recovered by the employer.

9 § 4712. Regulations.

10 The department shall promulgate regulations as necessary to
11 implement this chapter.

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