



JOINT WRITTEN STATEMENT FROM THE DEPARTMENT OF HEALTH  
AND THE INSURANCE DEPARTMENT

*House Insurance Committee*

*Public Hearing on the HB 1763*

*The Fair Health Care Provider Contracting Act*

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Submitted By:

Pennsylvania Department of Health and Pennsylvania Insurance Department

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November 29, 2011

The Pennsylvania Department of Health (DOH) and the Pennsylvania Insurance Department (PID) submit to Chairmen Micozzie and DeLuca and the House Insurance Committee the following written statement pertaining to the provisions of House Bill 1763, *The Fair Health Care Provider Contracting Act*.

Due to a number of concerns possessed by both the DOH and PID, the agencies must oppose House Bill 1763 as written.

Both the DOH and PID understand and appreciate the subtle but yet complicated issues that exist between health insurers and health care providers. The provisions of House Bill 1763 seek to address some of these technical issues surrounding contracting and reimbursement. However, the DOH and PID have a number of concerns with seeking a legislative remedy to business process issues between private parties. It is the firm belief of both the DOH and PID that the Commonwealth should not seek to codify specific business operations or practices as this will limit innovation of the private sector in advancing new approaches to improve quality and control costs.

What is articulated below represents some of the general concerns with House Bill 1763 that the DOH and PID have identified through its initial analyses. Both agencies would strongly urge the committee to pursue an alternative path to address the issues identified in the bill; a path that does not stifle the private sector's innovative drive to improve quality and reduce costs.

In addition to the concerns noted above, other concerns held by the DOH and PID with House Bill 1763 are as follows:

- A number of the provisions in this bill are already addressed in current Pennsylvania law (Act 68 of 1998), and in some instances what is proposed in House Bill 1763 presents a conflict with the requirements of Act 68. This presents legal and regulatory problems for both regulated entities and the DOH and PID. Two examples of such conflict are seen in the bill's provisions dealing with clean claims and continuity-of-care.
- The definition of "health insurer" is narrowly defined to include only Blue Cross and Blue Shield plans and this could create confusion in the market as to which requirements managed care plans owned and operated by Blue plans are required to follow and, more importantly, which requirements the DOH and PID are required to enforce.
- The bill requires a prescriptive definition of medical necessity be used in all provider contracts. Not only is this provision in conflict with Act 68, preventing an insurer, or in the case of House Bill 1763 certain insurers, from developing its own definition of medical necessity severely restricts the ability of the insurer to manage care costs and ensure services delivered to its enrollees are appropriate, high quality, and cost-effective.

- Finally, the bill does not fully address enforcement issues. Although the bill allows for civil enforcement, of certain provisions, it does not provide any state agency with direct oversight authority. In addition, any new duties to be performed by either the DOH or PID will require additional resources that neither agency currently has available.

Again, both the DOH and PID would strongly urge the committee to pursue an alternative path to find a remedy to issues addressed in House Bill 1763. The Commonwealth should refrain from codifying specific business operations or practices of the private sector, especially when it could present an obstacle to innovations in health care financing and delivery. The Commonwealth needs to promote dialogue between insurers and providers that is focused on collaboration and moving the health care system towards paying for value not volume.

Based upon the concerns identified above, the DOH and PID are opposed to House Bill 1763 as written. Thank you.