SPONSOR: Rep. Kowalko & Rep. Jaques & Sen. McDowell
Reps. Baumbach, Keeley

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 74

AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO HEALTH INSURANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 31 of the Delaware Code by making insertions as shown by underlining as follows:

Chapter 16. DELAWARE HEALTH SECURITY ACT

§1601. Purpose of the Delaware Health Security Act.

The purpose of this Chapter is to:

(1) Guarantee every Delaware citizen, and out-of-state citizens who receive health care coverage from Delaware employers, all necessary health care services offered by the provider of each citizen's choice; and

(2) Replace the current mixture of private and public health care plans with a comprehensive single payer health care system available to every Delaware citizen.

§1602. Definitions.

The following words and phrases as used in this Chapter shall have the following meanings;

(1) "Authority Fund" means the Delaware Health Security Authority Fund established in §1616 of this Chapter.

(2) "Board" means the appointed members of the Delaware Health Security Authority, which is to administer the Delaware Health Security Act;

(3) "Executive Director" means the Executive Director of the Delaware Health Security Authority;

(4) "Health Care" means care provided to an individual by a licensed health care professional to promote physical or mental health, to prevent illness and injury and to treat illness and injury;

(5) "Health Care Authority" or “Authority” means the Delaware Health Security Authority established in §1603 of this Chapter;

(6) "Health Care Facility" means any facility or institution, whether private or public, nonprofit or proprietary, which offers diagnosis, treatment, inpatient or ambulatory care to two or more unrelated persons;

(7) "Health Care Provider" means a person, partnership, corporation or other business organization, other than a facility or institution, licensed, certified or authorized by law to provide professional health care services in the state to an individual;

(8) "Professional Advisory Committee" means a committee of advisors appointed by a Director of a Division of the Delaware Health Security Authority;

(9) "Resident" means a person who lives in Delaware as evidenced by an intent to continue to live in Delaware and to return to Delaware if temporarily absent, coupled with an act or acts consistent with that intent. The Authority shall adopt standards and procedures for determining whether a person is a resident and for determining out-of-state citizens' eligibility based on receiving health care coverage through their Delaware employers. Such rules and standards shall include:

(i) A provision requiring that the person seeking resident status has the burden of proof in such determination;

(ii) Reasonable durational domicile requirements not to exceed two years for long term care and 90 days for all other covered services;

(iii) A provision that a residence established for the purpose of seeking health care shall not by itself establish that a person is a resident of the state; and

(iv) A provision that, for the purposes of this Chapter, the terms "domicile" and "dwelling place" are not limited to any particular structure or in real property and specifically includes homeless individuals with the intent to live and return to Delaware if temporarily absent coupled with an act or acts consistent with that intent; and

(10) "Secretary" shall mean the Secretary of the Department of Health And Social Services.

§1603. Establishment of the Delaware Health Security Authority.

(a) There is hereby created a body corporate and politic to be known as the Delaware Health Security Authority hereinafter referred to as the Authority. The Authority is hereby constituted a public instrumentality of the state and the exercise by the Authority of the powers conferred by this Act shall be deemed and held the performance of an essential governmental function. The Authority is placed in the Department of Health and Social Services but shall not be subject to the supervision or control of said Department or of any Board, Bureau, Department or other agency of the state except as specifically provided by this Act.

(b) The Authority may purchase from, contract with or otherwise deal with any organization in which any Authority board member is interested or involved; provided, however, that such interest or involvement is

disclosed in advance to the Authority's board members and recorded in the minutes of the proceedings of the Authority; and provided, further, that any board member having such an interest or involvement may not participate in any debate or decision relating to such organization.

(c) All officers and employees of the Authority having access to its cash or negotiable securities shall give bond to the Authority, in such amount and with such surety as the Authority's board shall prescribe. The persons required to give bond may be included in one or more blanket or schedules' bonds.

(d) Board members, officers and advisors who are not regular, compensated employees of the Authority shall not be liable to the State, to the Authority or to any other person as a result of their activities, whether ministerial or discretionary, as such board members, officers or advisors except for willful dishonesty or intentional violations of law. The Board of the Authority may purchase liability insurance for board members, officers, advisors or employees and may indemnify said persons against the claims of others.

§1604. Powers of the Delaware Health Security Authority.

(a) The Authority shall have the following powers:

(1) To make, amend and repeal by-laws, rules and regulations for the management of its affairs;

(2) To adopt an official seal;

(3) To sue and be sued in its own name;

(4) To make contracts and execute all instruments necessary or convenient for carrying out the purposes of this Act;

(5) To acquire, own, hold, dispose of and encumber personal, real or intellectual property of any nature of any interest therein;

(6) To enter into agreements or transactions with any federal, state or municipal agency or other public institution or with any private individual, partnership, firm, corporation, association or other entity;

(7) To appear on its own behalf before boards, commissions, departments or other agencies of federal, state or municipal government;

(8) To appoint officers and to engage and employ employees, including legal counsel, consultants, agents and advisors and prescribe their duties and fix their compensation;

(9) To establish advisory boards and councils;

(10) To procure insurance against any losses in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(11) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement, in such investments as may be lawful for fiduciaries in the state;

(12) To accept, hold, use, apply and dispose of any and all donations, grants, bequests and devises, conditional or otherwise, of money, property, services or other things of value, which may be received from the United States or other agency thereof, any governmental agency, any institution, person, firm or corporation, private or public. Such donations, grants, bequests and devises may be held, used, applied or disposed for any and all of the purposes specified in this Act and shall be used in accordance with the terms and conditions of any such grant. Receipt of each such donation or grant shall be detailed in the annual report of the Authority, which shall include the identity of the donor, lender, the nature of each transaction and any conditions attached thereto; and

(13) To do any and all other things necessary to carry out the purposes of the Delaware Health Security Act.

§1605. Board of the Authority; Composition, Powers and Duties.

(a) There is hereby created a statewide Board that will govern the Delaware Health Security Authority. The Board will be comprised of fifteen members as follows:

(1) Two members from the State Senate, each of whom shall be a member of the Senate Committee concerned with health care to be appointed by the President Pro Tempore;

(2) Two members of the House of Representatives, each of whom shall be a member of the House Committee concerned with health care to be appointed by the Speaker of the House;

(3) The Secretary of the Department of Health and Social Services;

(4) Five representatives from different statewide Delaware health care professional organizations to be appointed on a rotating basis by the Governor and confirmed by the Senate with the requirement that two of these five appointed representatives will always be from the Medical Society of Delaware and the Delaware Nurses Association; and

(5) Five members from statewide Delaware consumer groups on a rotating basis that have endorsed a single payer health care system at least five years prior to the enactment of this Chapter, to be appointed by the Governor and confirmed by the Senate.

(b) The Governor shall make appointments to the Board from nominations submitted by eligible organizations. Eligible organizations shall submit nominees to the Governor within one month of enactment of this Act. The Governor shall make Board appointments within two months of receiving these nominations.

(c) Each Board member shall serve a term of five years; provided, however, that in making the initial appointments, five members shall serve three-year terms, five members shall serve four-year terms and five members shall serve five-year terms. Any person appointed to fill a vacancy on the Board shall serve for the unexpired term of the predecessor Board member. Any Board member shall be eligible for reappointment. Any Board member may be removed from her/his appointment by the Governor for cause. Eight Board members shall constitute a quorum and the affirmative vote of a majority of the members present and eligible to vote at a meeting shall be necessary for any action to be taken by the Board. The Authority's Board shall meet at least ten times each year and have the final authority over the activities of the Delaware Health Security Authority. The Board appointees shall annually elect a Chair and Vice-Chair from among their membership. Board members shall serve without compensation, but each Board member shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties.

§1606. Executive Director, Health Security Authority; Purpose and Duties.

(a) The Board of the Delaware Health Security Authority shall hire an Executive Director who shall be the executive and administrative head of the Authority and shall be responsible for administering and enforcing the provisions of law relative to the Authority.

(b) The Executive Director may as he or she deems necessary or suitable for the effective administration and proper performance of the duties of the Authority and subject to the approval of the Board of the Authority, do the following:

(1) Adopt, amend, alter, repeal and enforce, all such reasonable rules, regulations and orders as may be necessary; and

(2) Appoint and remove employees and consultants; provided, however, that, subject to the availability of funds in the Authority, at least one employee shall be hired to serve as Director of each of the Divisions created in §1607 through §1610 of this Chapter.

(c) The Executive Director shall:

(1) Negotiate or establish terms and conditions for the provision of health care services and rates of reimbursement for such services on behalf of the citizens of the state;

(2) Negotiate or establish manufacturer discounts and rebates for covered prescription drugs and other health care products;

(3) Develop prospective and retrospective reimbursement systems for covered services to provide prompt and fair payment to eligible providers;

(4) Oversee preparation of annual operating and capital budgets for the statewide delivery of health care services;

(5) Oversee preparation of annual benefits reviews to determine the adequacy of covered services; and

(6) Prepare an annual report to be submitted to the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives and to be easily accessible to every participating member and citizen in our state.

§1607. Administrative Division; Purpose and Duties.

(a) There shall be an Administrative Division within the Health Security Authority, which shall be under the supervision and control of a Director. The powers and duties given the Director in this Act and in any other general or special law shall be exercised and discharged subject to the direction, control and supervision of the Executive Director of the Authority. The Director of the Administrative Division shall be appointed by the Executive Director of the Authority, with the approval of the Board of the Health Security Authority, and may, with like approval be removed. The Director may, at her or his discretion, establish a professional advisory committee to provide expert advice; provided, however, that the committee shall have at least 33 percent consumer representation.

(b) The Administrative Division shall have day-to-day responsibility for:

(1) Making prompt payments to providers for covered services;

(2) Collecting reimbursement from non-eligible patients;

(3) Developing information management systems needed for provider payment, rebate collection and utilization review;

(4) Investing Authority Fund assets consistent with state laws and §1616 of this Act;

(5) Developing operational budgets for the Authority; and

(6) Assisting the Planning Division develop capital budgets for the Authority.

§1608. Planning Division; Director; Purpose and Duties.

(a) There shall be a Planning Division within the Authority, which shall be under the supervision and control of a Director. The powers and duties given the Director in this Act and in any other general or special law shall be exercised and discharged subject to the direction, control and supervision of the Executive Director of the Authority. The Director of the Planning Division shall be appointed by the Executive Director of the Authority, with the approval of the Board of the Health Security Authority, and may, with like approval, be removed. The Director may, at her or his discretion, establish a professional advisory committee to provide expert advice; provided, however, that such committee shall have at least 33 percent consumer representation.

(b) The Planning Division shall have day-to-day responsibility for coordinating health care resources to ensure all eligible participants reasonable access to covered services.

(c) The Planning Division shall review annually the adequacy of health care resources throughout the State and recommend changes as may from time to time be required. The Planning Division shall submit to the Board of the Authority its final review and recommendations by October 1 of each year. Subject to Authority Board approval, the Authority shall adopt the recommendations.

§1609. Quality Assurance Division; Director; Purpose and Duties.

(a) There shall be a Quality Assurance Division within the Authority, which shall be under the supervision and control of a Director. The powers and duties given the Director in this Act and in any other general or special law shall be exercised and discharged subject to the direction, control and supervision of the Executive Director of the Authority. The Director of the Quality Assurance Division shall be appointed by the Executive Director of the Authority, with the approval of the Board of the Health Security Authority, and may, with like approval be removed. The Director may, at her or his discretion, establish a professional advisory committee to provide expert advice; provided, however, that this committee shall have at least 33 percent consumer representation.

(b) The Quality Assurance Division shall review annually the quality of health care services and outcomes throughout the state and submit such recommendations as may from time to time be required to maintain and improve the quality of health care delivery and the overall health of Delaware citizens. The Division shall submit to the Board of the Authority its final review and recommendations by October 1 of each year. Subject to Advisory Board approval, the Authority shall adopt the recommendations.

§1610. Benefits Division; Director; Purpose and Duties.

(a) There shall be a Benefits Division within the Authority, which shall be under the supervision and control of a Director. The powers and duties given the Director in this Act and in any other general or special law shall be exercised and discharged subject to the direction, control and supervision of the Executive Director of the Authority. The Director of the Benefits Division shall be appointed by the Executive Director of the Authority, with the approval of the Authority's Board, and may, with like approval, be removed. The Director may, at her or his discretion, establish a professional advisory committee to provide expert advice; provided, however, that such committee shall have at least 33 percent consumer representation.

(b) The Benefits Division shall review annually the adequacy of covered benefits and recommend changes in covered benefits as from time to time be required. The Division shall submit to the Board of the Authority its final review and recommended changes by October 1 of each year. Subject to Board approval, the Authority shall adopt the recommended changes.

§1611. Eligible Participants.

The following persons shall be entitled to benefits under this Chapter:

(a) All Delaware citizens;

(b) All non-residents who:

(1) Work 20 hours or more per week in Delaware, including legal non-resident aliens;

(2) Pay all applicable Delaware personal income and payroll taxes;

(3) Pay any additional premiums established by the Authority; and

(4) Have complied with requirements of this paragraph for at least 90 days; and

(c) All patients requiring emergency treatment for illness or injury; provided, however, that the Authority shall recoup expenses for such patients whenever possible.

§1612. Eligible Health Care Providers and Facilities.

(a) Eligible health care providers and facilities shall include an agency, facility, corporation, individual or other entity directly rendering any covered benefit to an eligible patient; provided, however, that it:

(1) Is licensed to operate or practice in the state;

(2) Furnishes a signed agreement that:

a. All health care services will be provided without discrimination on the basis of age, sex, race, national origin, sexual orientation, income status or pre-existing condition;

b. The provider will comply with all state and federal laws regarding the confidentiality of patient records and information;

c. No balance billing or out-of-pocket charges will be required for covered services unless otherwise provided in this Act; and

d. The provider will furnish such information as may be reasonably required by the Authority for making payment, verifying reimbursement and rebate information, utilization review analyzes, statistical and fiscal studies of operations and compliance with state and federal law. All such disclosures, however, should meet the strictest standards of privacy protection, as set forth in state or federal legislation or in the standards of professional practice associations, whichever is more protective of patient confidentiality and non-identifiable; and

(3) Meets whatever additional requirements that may be established by the Authority.

§1613. Prospective Payments to Eligible Health Care Providers and Facilities.

(a) The Authority shall negotiate with eligible health care providers, health care facilities, or groups of providers or facilities, or establish prospective reimbursement schedules or rates for covered services. Such reimbursement schedules or

rates may be made on a capitated or fee-for-service basis and shall remain in effect for a period of 12 months unless sooner modified by the Authority. Except as provided in §1614 of this Chapter, reimbursement for covered services by the Authority shall constitute full payment for the services.

(b) Prospective payment rates and schedules shall be adjusted annually to incorporate retrospective adjustments.

§1614. Retrospective Payments to Eligible Health Care Providers and Facilities.

The Authority shall provide for retrospective adjustments of payments to eligible health care providers and facilities to assure that payments to such providers and facilities reflect the difference between actual and projected utilization and expenditures for covered services; and protect health care providers and facilities who serve a disproportionate share of eligible participants whose expected utilization of covered health care services and expected health care expenditures for such services are greater than the average utilization and expenditure rates for eligible participants statewide.

§1615. Covered Services.

(a) The Health Security Authority shall reimburse all professional services provided by eligible providers to eligible participants to:

(1) Provide appropriate and necessary health care services;

(2) Encourage reductions in health risks and increase use of preventive and primary care services; and

(3) Attempt to integrate physical health, mental health, emotional health and substance abuse services.

(b) Covered services shall include all health care determined to be necessary or appropriate by the Authority including, but not limited to the following:

(1) The prevention, diagnosis and treatment of illness and injury, including laboratory, diagnostic imaging, inpatient, ambulatory and emergency medical care, blood, dialysis, mental health services, dental care, acupuncture, optometric, chiropractic and pediatric services;

(2) The rehabilitation of sick and disabled persons (including addiction to all drugs), providing physical, psychological and other specialized therapies, and long term services in community-based and institutional settings;

(3) The provision of prescription drugs, therapeutic devices, prosthetics, eyeglasses, hearing aids and other health care supplies;

(4) The promotion and maintenance of individual good health through appropriate screening, counseling and health education;

(5) The provision of home health, personal care, hospice and service of nurse practitioners, nurse midwives, language interpretation and such other medical and remedial services as the Authority shall determine;

(6) Emergency and other medically necessary transportation; and

(7) Prenatal, perinatal and maternity care, family planning, fertility and reproductive health care.

§1616. Establishment of the Authority Health Care Fund.

There is hereby established the Authority Health Care Fund, hereinafter known as the Authority Fund, which shall be administered and expended by the Authority without further appropriation. The Fund shall consist of all revenue sources defined in §1618, and all properties and securities acquired by and through the use of monies deposited to the Authority Fund and all interest therein less payments therefrom to meet liabilities incurred by the Authority in the exercise of its powers and the performance of its duties under this Act. The Executive Director shall from time to time requisition from said Authority Fund such amounts as the Executive Director deems necessary to meet the current obligations for a reasonable period.

§1617. Purpose of the Authority Health Care Fund.

Amounts credited to the Authority Fund may be used for the following purposes:

(a) To reimburse eligible health care providers and facilities for covered services rendered to eligible patients;

(b) To pay for preventive care, educational and outreach programs and related health care activities;

(c) To supplement other sources of financing for health care education and research;

(d) To fund training programs and provide economic assistance for professional and non-professional workers in the health care sector displaced as a result of administrative streamlining gained by moving from a multi-payer to a single payer system and who choose to remain in the health care field to fill additional needed health care service positions; provided, however, that such funding shall end June 30 of the third year following full implementation of this Act;

(e) To fund a reserve account to finance anticipated long-term cost increases due to demographic changes, inflation or other foreseeable trends that would increase Authority Fund liabilities, and, for budgetary shortfalls, epidemics and other extraordinary events; and

(f) To pay the administrative costs of the Health Care Authority.

§1618. Health Security Authority's Funding Sources.

(a) The Authority Fund shall be a repository for all health care funds and related administrative funds from the following sources:

(1) All monies the state currently appropriates to pay for health care services or health insurance premiums, including, but not limited to, all current state programs which provide covered benefits and appropriations to cities, towns, counties and other government subdivisions to pay for health care services or health insurance premiums; provided, however, that the Authority shall then assume responsibility for all benefits and services previously paid for by the state with these funds. All current state health care programs which provide covered benefits shall be included in this requirement;

(2) All monies the state receives from the federal government to pay for health care services or insurance premiums; provided, however, that the Authority shall assume the responsibility for all benefits and services previously paid by the federal government with these funds. The Authority shall seek to maximize all sources of federal financial support for health care services in Delaware. Accordingly, the Executive Director of the Authority shall obtain waivers or exemptions so that all current federal payments for health care shall, consistent with federal law, be paid directly to the Authority Fund;

(3) Private individual and employer health insurance payments and out-of-pocket health care expenses will be replaced in this single payer Delaware Health Security Act as follows:

a. All employers shall pay a graduated payroll tax as follows:

(i) 4 percent for employers with less than ten employees;

(ii) 5 percent for employers with 10 to 24 employees;

(iii) 7 percent for employers with 25 to 49 employees; and

(iv) 9 percent for employers with 50 or more employees..

Single employers shall pay no payroll tax as each will pay according to paragraphs b. or c. of this subsection that applies.

b. All heads of households and persons subject to Delaware's income tax return shall pay an additional Health Security income tax of 2.5 percent of taxable income.

c. Persons filing a Delaware income tax return shall pay an additional Health Security income surtax of 2.5 percent on net taxable income in excess of $250,000. Married couples filing a Delaware joint income tax return shall pay an additional income surtax of 2.5 percent on net taxable income in excess of $500,000.

(b) The Authority Fund shall retain:

(1) Any charity donations, gifts, grants or bequests made to it from whatever source consistent with state and federal law;

(2) Any rebates negotiated or established; and

(3) Income from the investment of Authority assets, consistent with state and federal law.

§1619. Insurance Reforms.

Insurers regulated by the Delaware Insurance Department are prohibited from charging premiums to eligible participants for coverage of services already covered by the Health Security Authority. The State Insurance Commissioner shall adopt, amend, alter, repeal and enforce all such rules and regulations and orders as may be necessary to implement this section.

Ssynopsis

This Delaware Health Security Act will provide a cost effective single payer health care system for the State of Delaware. The Act will provide comprehensive health care coverage to all Delawareans without any extra health insurance or out-of-pocket- expense. The system will save money currently wasted on administrative/overhead costs and will provide a stable funding structure.

This Act creates the Delaware Health Security Authority. The authority will be governed by a 15-member Delaware Health Security Board comprised as follows: the Secretary of Health And Social Services, two members from both the State House of Representatives and State Senate Committees concerned with health care issues, five members from state health professional organizations, and five members from eligible consumer organizations in our state.

Funding for the new health care system will be as follows:

(1) All state and federal funds available for health and health care costs in Delaware;

(2) Employer and employee graduated payroll tax from 4 percent for employers with less than ten employees to 9 percent for employers with 50 or more employees;

(3) A Health Security tax of 2.5 percent on net taxable income (after deductions) for all heads of households and persons subject to Delaware's income tax; and

(4) An additional Health Security income surtax on net taxable income of 2.5 percent for persons filing a Delaware income tax return in excess of $250,000. Married couples filing a joint Delaware income tax return shall pay an additional income surtax of 2.5 percent on net taxable income in excess of $500,000.