IN THE GENERAL ASSEMBLY STATE OF _________

An Act to Protect Physicians from Retaliation for Communicating with Patients and Authorities

Be it enacted by the People of the State of ____________, represented in the General Assembly:

Section 1. Title. This act shall be known as and may be cited as the Patient Right to Know and Anti-Retaliation Act.

Section 2. Purpose. The Legislature hereby finds and declares that:

1. Patients need access to all relevant information to make appropriate decisions about their health care.

2. Physicians and health care providers must be able to discuss medical treatment options with patients, and to observe, protect, and promote the rights of patients.

3. Open medical communications between healthcare providers and their patients is the key to prevention and early diagnosis and treatment, as well as to informed consent and quality, cost-effective care.

4. Open medical communications are in the best interests of patients.

5. It is critical that healthcare providers continue to exercise their best medical, ethical, and moral judgment in advising patients without interference from health insurers.
6. Legislators, regulators, and public policy markers need to receive as much information as possible when making decisions concerning how best to protect and promote not only patients’ access to care, but the quality of that care.

7. To ensure that they receive this information, legislators, regulators, and policymakers must be able to engage in open, unhindered conversations with physicians and health care providers.

8. Many physicians and health care providers are reluctant to engage in open, unhindered communications with legislators, regulators, and health care policy makers for fear of retaliation by health insurers.

Section 3. Definitions. For purposes of the Act, the term:

1. Health Insurer means an entity or person that offers or administers a health insurance plan, coverage or policy in this state, or contracts with physicians and other health care providers to furnish specified health care services to enrollees covered under a health insurance plan or policy.

2. Health Insurance Plan means any hospital and medical expense incurred policy, non-profit health care service plan contract, health maintenance organization subscriber contract or any other health care plan, policy, coverage or arrangement that pays for or furnishes medical or health care services, whether by insurance or otherwise, offered in this State.

Section 4. Communication with, or on behalf of, Patients. A health insurer shall not in any way interfere with the ability of a physician to communicate with or on behalf of: (a) a current, former, or prospective patient (“patient”); (b) any person designated by a patient; and (c) any
person or entity purchasing, or funding in whole or in part, health care services to a patient.

Communications protected under this section include, but are not limited to:

(1) communications concerning alternative medical care, treatment options (including experimental treatments), or pharmaceuticals which may be available to the patient;

(2) communications regarding the termination of a contract or the fact that the physician or health care provider will no longer be providing services pursuant to a contract;

(3) communications about the provisions, terms, or requirements of any product, benefit plan, or health insurance policy or health insurance plan;

(4) communications regarding the processes that a health insurer uses or proposes to use to determine whether or not payment will be made for a health care item or service;

(5) communications about variations in experience, quality, or outcome among any health care providers or health care facilities providing any medical or health care item or service;

(6) communications regarding treatment options, alternative plans, or other coverage arrangements;

(7) criticisms of a patient’s health coverage, including but not limited to, expressed personal disagreement with a decision made regarding treatment or coverage provided to a patient;

(8) a physician’s use of disparaging language or disparaging comments when referring to a health insurer or health insurance plan; and

(9) communications about a patient’s right to appeal a coverage determination with which a physician or patient does not agree.
Section 5. Advocacy Activities and Communications. Health insurers are prohibited from interfering with a physician’s or health care provider’s advocacy activities and communications with authorities. These activities and communications include, but are not limited to:

(1) advocating in public or private on behalf of a patient, including but not limited to, advocating on behalf of a patient as part of an independent or external review proceeding, or protesting a decision, policy or practice of a health insurer;

(2) communications to a public official or other persons that relate to health care items or services, including but not limited to, communications about public policy issues concerning health care items or services.

(3) filing a complaint or making a report or commenting to an appropriate governmental body regarding actions, policies, or practices of a health insurer the physician believes may negatively impact upon the quality of, or access to, patient care;

(4) providing testimony, evidence, or opinion in any forum concerning a violation or possible violation of any provision of this Act;

(5) reporting what the physician believes to be a violation of law to an appropriate authority; and

(6) participation in any investigation into a violation or possible violation of any provision of this Act.

Section 6. Retaliation Prohibited for Communications or Activities under Sections 4 or 5. No individual or person may discriminate, penalize or engage in retaliatory action against a physician or health care provider because the physician or health care provider engaged in activities or communications described in Section 4 or Section 5 of this Act. Actions prohibited by this Section 6 include, but are not limited to:
(1) terminating or refusing to renew a contract or agreement with the physician or health care provider;

(2) refusing to refer patients to, or allow others to refer patients to, the physician or health care provider;

(3) demoting the physician or health care provider, including but not limited to, assigning the physician or health care provider to a less desirable tier in a “tiered network;” and

(4) refusing to compensate a physician or health care provider for health care items and services that are medically necessary.

Section 7. Nullification. Any contact, policy, or procedure in violation of this Act shall be null and void.

Section 8. Injunction. If a health insurer is violating or about to violate any provision of this Act, an individual, person, or applicable state agency may commence an action to enjoin such violation.

Section 9. Civil penalties. An individual, person, or applicable state agency may bring an action for civil penalties against any health insurer who violates or causes a violation of this Act. The civil penalty for which such health insurer is liable under this section may not be less than __________ or more than ______________ for each act of violation.

Section 10. Effective. This Act shall become effective immediately upon being enacted into law.

Section 11. Severability. If any provision of this Act is held by a court to be invalid, such invalidity shall not affect the remaining provisions of this Act, and to this end the provisions of this Act are hereby declared severable.