

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2967 Session of
2004

INTRODUCED BY REED, ARMSTRONG, BAKER, BARRAR, BOYD, CAUSER,
S. E. CORNELL, CREIGHTON, DALLY, GINGRICH, HESS, LEH,
MARKOSEK, McILHATTAN, NICKOL, RUBLEY, B. SMITH AND
E. Z. TAYLOR, NOVEMBER 9, 2004

REFERRED TO COMMITTEE ON INSURANCE, NOVEMBER 9, 2004

AN ACT

1 Amending Titles 40 (Insurance) and 62 (Procurement) of the
2 Pennsylvania Consolidated Statutes, establishing the Small
3 Business Employee Health Insurance Protection Fund and a
4 program to provide financial assistance to certain small
5 employers that maintain employee health insurance coverage;
6 providing for consolidated contracts; and further authorizing
7 cooperative purchasing by public procurement units.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Title 40 of the Pennsylvania Consolidated
11 Statutes is amended by adding a part to read:

12 PART IV

13 MISCELLANEOUS PROVISIONS

14 ARTICLE A

15 INSURANCE PROGRAMS

16 CHAPTER 81

17 EMPLOYEE HEALTH INSURANCE ASSISTANCE PROGRAM

18 Sec.

19 8101. Short title of chapter.

1 8102. Legislative findings and intent.
2 8103. Definitions.
3 8104. Employee Health Insurance Protection Fund.
4 8105. Employee Health Insurance Protection Program.
5 8106. Application process.
6 8107. Outreach plan.
7 8108. Penalties.
8 8109. Limitation on expenditure of funds.
9 § 8101. Short title of chapter.

10 This chapter shall be known and may be cited as the Small
11 Business Employee Health Insurance Protection Act.

12 § 8102. Legislative findings and intent.

13 The General Assembly finds and declares as follows:

14 (1) All citizens of this Commonwealth should have access
15 to health care.

16 (2) The uninsured health care population of this
17 Commonwealth is estimated to be over 1,390,000 persons, an
18 increase of more than 485,000 persons since 2000. Many
19 thousands more lack adequate insurance coverage.

20 (3) The Commonwealth's rate of uninsured has recently
21 grown by an alarming 50%. The rate was 7.6% in 2000, about
22 half the rate of the nation, and is now estimated to be
23 11.4%. In this key index of economic well-being, the
24 Commonwealth is losing an advantage and starting to catch up
25 to the nation.

26 (4) The uninsured lack access to timely and appropriate
27 primary and preventive care. As a result, health care is
28 often delayed or forgone, resulting in increased risk of
29 developing more severe conditions that in turn are more
30 expensive to treat. The tendency to delay accessing

1 appropriate care and instead seek health care in a hospital-
2 based setting causes inefficiencies in our health care
3 system.

4 (5) Our health care market has been distorted through
5 cost shifts for the uncompensated health care costs of our
6 uninsured citizens, causing a decrease in competition among
7 health care providers who serve the poor, ultimately
8 increasing the costs to other health care purchasers.

9 (6) It is estimated that approximately two-thirds of the
10 uninsured are employed or dependents of employed persons, and
11 the percentage of people without employment-based health
12 insurance is climbing.

13 (7) Small employers are much less likely to provide
14 health insurance coverage for employees and their dependents
15 than are larger employers.

16 (8) Larger employers are able to self-insure their group
17 health plans and are subject to the provisions of the
18 Employee Retirement Income Security Act of 1974 (Public Law
19 93-406, 88 Stat. 829) that exempts them from State-imposed
20 health insurance mandates, benefits required to be covered
21 under an individual or group health insurance policy. Smaller
22 employers cannot cost-effectively self-insure and must
23 instead purchase coverage that includes a series of State-
24 imposed health insurance mandates that increases the cost of
25 coverage.

26 (9) Changes in the way health insurers develop health
27 insurance rates for the small group market have greatly
28 increased the cost of coverage for many small employers,
29 particularly those who employ women of childbearing years and
30 older individuals who statistically use health care services

1 more often. Such changes allow health insurers to consider
2 such factors when developing rates and enables insurers to
3 pass those costs along to the small employer without the
4 small employer receiving the benefit of true group-related
5 insurance which spreads the risk across a broader scale,
6 thereby offsetting huge spikes in costs.

7 (10) Employees of small businesses and their dependents
8 should have access to comprehensive primary health coverage
9 in this Commonwealth.

10 (11) Small businesses should be given every incentive to
11 provide or continue to provide comprehensive health care
12 coverage for employees and their dependents.

13 (12) Equity should be assured for employees of small
14 businesses and their dependents by providing a public
15 incentive for those small employers that provide
16 comprehensive health insurance coverage in the face of the
17 rapidly escalating cost of coverage.

18 § 8103. Definitions.

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

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

23 "Eligible employer." A for-profit corporation, limited
24 liability company, partnership or proprietorship that meets all
25 of the following:

26 (1) Maintains a place of business in this Commonwealth.

27 (2) Purchases a health insurance plan from an insurer
28 covering one or more Commonwealth-based employees.

29 (3) Agrees to substantially maintain operations in this
30 Commonwealth throughout the year in which the application for

1 financial assistance is filed.

2 "Fraternal benefit society." An entity organized and
3 operating under Article XXIV of the act of May 17, 1921
4 (P.L.682, No.284), known as The Insurance Company Law of 1921.

5 "Fund." The Small Business Employee Health Insurance
6 Protection Fund established under section 8104(a) (relating to
7 Employee Health Insurance Protection Fund).

8 "Health insurance plan." An individual accident and health
9 insurance policy or a small group plan issued by an insurer to
10 provide comprehensive health insurance coverage for employees of
11 an eligible employer, whether issued directly to the employer or
12 made available to the employer through membership in a multiple
13 employer trust or an association. The term does not include any
14 of the following types of insurance or any combination thereof:

- 15 (1) hospital indemnity;
- 16 (2) accident;
- 17 (3) specified disease;
- 18 (4) disability income;
- 19 (5) dental;
- 20 (6) vision;
- 21 (7) long-term care;
- 22 (8) workers' compensation; or
- 23 (9) any other limited benefit plans.

24 "Health service corporation." A professional health service
25 corporation as defined in section 6302 (relating to
26 definitions).

27 "Hospital plan corporation." A hospital plan corporation as
28 defined in section 6101 (relating to definitions).

29 "Insurer." An insurance company, association, exchange or
30 preferred provider organization that offers health care benefits

1 and is subject to regulation under the act of May 17, 1921
2 (P.L.682, No.284), known as The Insurance Company Law of 1921, a
3 fraternal benefit society, a nonprofit hospital plan
4 corporation, a nonprofit professional health service plan or a
5 managed care organization.

6 "Managed care organization." A health maintenance
7 organization organized and regulated under the act of December
8 29, 1972 (P.L.1701, No.364), known as the Health Maintenance
9 Organization Act, or a risk-assuming preferred provider
10 organization or exclusive provider organization, organized and
11 regulated under this chapter.

12 "Small group plan." A group accident and health insurance
13 plan purchased by an employer for a group of two to fifty
14 eligible persons.

15 § 8104. Employee Health Insurance Protection Fund.

16 (a) Establishment.--There is hereby established a special
17 fund in the State Treasury to be known as the Small Business
18 Employee Health Insurance Protection Fund.

19 (b) Sources.--Money produced by any savings from
20 consolidated contracting as provided for under 62 Pa.C.S. §
21 703(a) (relating to certification and audit of savings) and
22 interest earned by the fund shall be deposited in and credited
23 to the fund.

24 (c) Appropriation.--The money in the fund is hereby
25 appropriated, upon approval of the Governor, to the department
26 for the purpose of implementing the provisions of this chapter.

27 (d) Legislative oversight.--

28 (1) An annual financial and expenditure plan for the
29 fund shall be submitted by the Governor to the General
30 Assembly as part of the Governor's annual budget submission.

(2) The Secretary of the Budget shall provide a quarterly summary of savings to the Commonwealth achieved through consolidated contracting, as certified to the State Treasurer pursuant to 62 Pa.C.S. § 703(a), and financial statements showing the status of the fund to the chairman and minority chairman of the Appropriations Committee of the Senate and the chairman and minority chairman of the Appropriations Committee of the House of Representatives. The statement shall be provided within 30 days of the close of each quarter of the fiscal year and shall commence with the quarter ending December 31, 2004.

§ 8105. Employee Health Insurance Protection Program.

(a) Establishment.--The department shall utilize money it receives from the fund to provide financial assistance in the form of grants to eligible employers to be used toward the purchase of a health insurance plan covering employees. The department shall apply the criteria established under subsection (b) to determine eligibility for grants under this section. Financial assistance shall be granted to all eligible applicants on a proportional basis reflecting the number of covered employees in each health insurance plan.

(b) Eligibility criteria.--

(1) The department shall establish a minimum threshold to determine if an employer is eligible for a grant. The threshold shall reflect a comparatively high cost of health insurance coverage for the employer and shall be based on the per-employee cost of an applicant's health insurance plan relative to the total payroll of the employer, in addition to any other factors the department may determine appropriate.

(2) After the first year of operation and periodically

thereafter, the department shall review the program and the availability of funds.

(3) The department shall, if necessary, adjust the minimum threshold for eligibility so that applicants receive a meaningful level of financial assistance. The minimum threshold when proposed or adjusted shall be submitted to the Banking and Insurance Committee of the Senate and the Insurance Committee of the House of Representatives for review and comment. The committees shall have 60 days to submit comments to the department.

(c) Administrative expense limitation.--The department may not expend more than 2% of the fund moneys on administrative expenses relating to the purposes set forth in this section.

(d) Regulations.--The department shall promulgate regulations necessary to carry out the purposes of this chapter.

§ 8106. Application process.

(a) Application.--An employer must complete and submit to the department an application for employee health insurance assistance in order to be eligible for financial assistance under this chapter.

(b) Program year.--Application and eligibility shall be based on the cost of health insurance coverage, the number of employees covered by the health insurance plan, the total payroll cost for all employees and any other information required by the department from the applicant for the period of the immediate preceding calendar year.

(c) Maintenance of insurance.--To be eligible for financial assistance, an applicant must agree to continue to provide a substantially equivalent level of health insurance coverage for employees in the year during which the application is filed with

1 the department.

2 § 8107. Outreach plan.

3 In consultation with appropriate Commonwealth agencies, the
4 department shall develop an outreach plan to inform potential
5 applicants regarding eligibility and available financial
6 assistance. The plan shall include provisions for:

7 (1) Reaching different geographic areas, including rural
8 and inner-city areas.

9 (2) Enlisting the assistance of organizations
10 representing small employers.

11 (3) Assuring that special efforts are coordinated with
12 insurers to reach those small employers most likely to
13 benefit from financial assistance.

14 § 8108. Penalties.

15 (a) Failure to maintain operations.--An employer that
16 receives financial assistance and fails to substantially
17 maintain operations in this Commonwealth throughout the year in
18 which the employer receives the financial assistance shall
19 refund to the Commonwealth the total amount of the financial
20 assistance.

21 (b) Failure to continue coverage.--An employer that receives
22 financial assistance and fails to maintain the required health
23 insurance coverage for employees throughout the year in which
24 the employer receives the financial assistance shall refund to
25 the Commonwealth the total amount of the financial assistance.

26 (c) Waiver.--The department may waive the provisions in
27 subsections (a) and (b) if it determines that an employer's
28 operations were not maintained and health insurance coverage was
29 canceled or diminished because of circumstances beyond the
30 employer's control, including, but not limited to, natural

1 disasters or the sudden and unforeseen loss of a major supplier
2 or market.

3 § 8109. Limitation on expenditure of funds.

4 In no case shall the total amount of annual grants awarded by
5 the department under this chapter exceed the amount of receipts
6 annually deposited into the fund pursuant to 62 Pa.C.S. § 703(a)
7 (relating to certification and audit of savings) and any other
8 Federal or State funds received through the fund. The grants
9 awarded by the department shall in no way constitute an
10 entitlement derived from the Commonwealth or a claim on any
11 other funds of the Commonwealth.

12 Section 2. Section 103 of Title 62 is amended by adding a
13 definition to read:

14 § 103. Definitions.

15 Subject to additional definitions contained in subsequent
16 provisions of this part which are applicable to specific
17 provisions of this part, the following words and phrases when
18 used in this part shall have the meanings given to them in this
19 section unless the context clearly indicates otherwise:

20 * * *

21 "Consolidated contract." A contract for supplies or
22 services:

23 (1) in which the number of contractors has been reduced,
24 in comparison to the number of contractors under a previously
25 existing contract for the same supply or service by 50% of
26 the number of contractors under a previous contract as of
27 September 30, 2003; or

28 (2) that combines discrete procurement requirements from
29 not less than two existing contracts.

30 * * *

1 Section 3. Chapter 7 heading of Title 62 is amended and the
2 chapter is amended by adding sections to read:

3 CHAPTER 7

4 [(Reserved)]

5 CONSOLIDATED CONTRACTS

6 § 701. Consolidated contracts authorized.

7 The department and other Commonwealth agencies may enter into
8 consolidated contracts for the purpose of procuring supplies and
9 services.

10 § 702. Acceptance of bids or proposals.

11 If the department or any other Commonwealth agency issues an
12 invitation for bids or a request for proposals for the purpose
13 of awarding and entering into a consolidated contract, the
14 department or agency shall establish a time and date for receipt
15 of bids or proposals that is not less than 60 days after the
16 issuance of the invitation for bids or the request for
17 proposals.

18 § 703. Certification and audit of savings.

19 (a) Certification.--No later than January 31, 2005, in the
20 first year, and September 30 of each year thereafter, the
21 Secretary of the Budget shall calculate and certify to the State
22 Treasurer the savings produced by each consolidated contract in
23 effect during the immediately preceding fiscal year and publish
24 the methodology by which the savings are calculated, the
25 individual contract savings and the total amount of the savings
26 in the Pennsylvania Bulletin. The State Treasurer shall transfer
27 an amount equal to the total savings from the General Fund to
28 the Small Business Employee Health Insurance Protection Fund
29 established in 40 Pa.C.S. § 8104 (relating to Employee Health
30 Insurance Protection Fund).

1 (b) Duration.--

2 (1) The Secretary of the Budget shall continue to
3 calculate and certify any savings produced by a consolidated
4 contract over the duration of each contract, including any
5 contract renewals and extensions.

6 (2) Whenever an existing consolidated contract expires
7 and a new contract is awarded, the savings attributable to
8 the contract shall be recalculated by the Secretary of the
9 Budget, in accordance with subsection (a), to reflect any
10 changes in the terms and conditions of the contract and any
11 business or industry trends that could affect the level of
12 savings.

13 (c) Audit.--The Auditor General shall conduct an annual
14 audit of the administration of consolidated contracts under this
15 chapter.

16 (d) Application to executive agencies.--The Secretary of the
17 Budget shall calculate contract savings under subsection (a) for
18 all executive agencies. Any savings that accrue to an
19 independent agency, a State-affiliated entity or a local public
20 procurement unit shall not be included.

21 Section 4. Section 1902 of Title 62 is amended to read:

22 § 1902. Cooperative purchasing authorized.

23 A public procurement unit may either participate in, sponsor,
24 conduct or administer a cooperative purchasing agreement for the
25 procurement of any supplies, services or construction with one
26 or more public procurement units or external procurement
27 activities in accordance with an agreement entered into between
28 the participants. The Department of General Services is
29 authorized to enter into cooperative purchasing contracts solely
30 for the use of local public procurement units or State-

1 affiliated entities. [The] When the department enters into a
2 consolidated contract, the department shall enter into
3 cooperative purchasing contracts for the same supply or service
4 for the use of local public procurement units or State-
5 affiliated entities [if the number of contractors under a
6 previously existing contract for the same supply or service is
7 reduced to a single contractor or reduced by more than 50% of
8 the number existing on September 30, 2003,] and shall award such
9 contracts pursuant to section 517 (relating to multiple awards)
10 using an invitation for bids. Nothing in this section shall
11 prohibit a local public procurement unit or State-affiliated
12 entity from participating in or procuring from other cooperative
13 purchasing agreements awarded by the department. Cooperative
14 purchasing may include, but is not limited to, joint or
15 multiparty contracts between public procurement units and open-
16 ended purchasing agency contracts which are made available to
17 local public procurement units.

18 Section 5. The provisions of 62 Pa.C.S. § 703 shall not
19 apply to any contract the Commonwealth has entered into prior to
20 September 30, 2003, unless the contract expires and a new
21 contract is awarded in which the terms and conditions are so
22 modified as to qualify as a consolidated contract.

23 Section 6. This act shall take effect immediately.