
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1398 Session of
2015

INTRODUCED BY ARGALL, MENSCH, FOLMER, AUMENT, BARTOLOTTA,
RAFFERTY AND BROWNE, OCTOBER 26, 2016

REFERRED TO EDUCATION, OCTOBER 26, 2016

AN ACT

1 Amending Title 24 (Education) of the Pennsylvania Consolidated
2 Statutes, establishing the Public School Employees' Benefit
3 Board and providing for its powers and duties; requiring a
4 school employee health benefits evaluation; providing for a
5 health benefits program for public school employees; and
6 establishing the Public School Employees' Benefit Trust Fund.

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

9 Section 1. Title 24 of the Pennsylvania Consolidated
10 Statutes is amended by adding a chapter to read:

11 CHAPTER 3

12 SCHOOL EMPLOYEE BENEFITS

13 Subchapter

14 A. Preliminary Provisions

15 B. Public School Employees' Benefit Board

16 C. School Employee Health Benefits Evaluation

17 D. Health Benefits Program

18 E. (Reserved)

19 F. Retirement Health Savings Plan

20 SUBCHAPTER A

1 political subdivisions as defined by 61 Pa. Code § 315.2
2 (relating to definitions), formed for the purpose of pooling
3 combined purchasing of the individual participants in order to
4 increase bargaining power to obtain health care benefits.

5 "Contribution rate." The rate established by the Public
6 School Employees' Benefit Board in accordance with section
7 334(b) and (c) (relating to partnership for stable benefits
8 funding) used to determine contributions by the Commonwealth and
9 public school entities for the funding of the benefit package
10 for eligible individuals in each health care region.

11 "Cost-sharing." The fee paid by the member that covers a
12 share of the cost of providing group health benefits under the
13 health benefits program or the fee paid by a school employee or
14 annuitant that covers a share of the cost of providing health
15 care coverage in a plan sponsored by the public school entity.

16 The term shall not include:

17 (1) any fee paid by the member, school employee or
18 annuitant at the time of service, such as copayments or
19 deductibles, in order to obtain prescription drugs or other
20 specific health care services; or

21 (2) any additional cost paid by the member, school
22 employee or annuitant for optional benefit packages.

23 "Eligible individual." An individual who is a member or the
24 health care dependent of a member.

25 "Employee benefits account." A ledger account of the Public
26 School Employees' Benefit Trust Fund created in section 336(a)
27 (1) (relating to Public School Employees' Benefit Trust Fund).

28 "Employer contribution account." A ledger account of the
29 Public School Employees' Benefit Trust Fund created in section
30 336(a) (3) (relating to Public School Employees' Benefit Trust

1 Fund).

2 "Health care dependent." An individual who is eligible to
3 receive health care coverage under the health benefits program
4 due to the individual's relation to the member, as determined by
5 the Public School Employees' Benefit Board.

6 "Health care region." The geographic regions determined by
7 the Public School Employees' Benefit Board to be appropriate for
8 providing health benefits for eligible individuals based on the
9 availability of insurance carriers, benefit administrators,
10 health care providers, health care provider networks, costs and
11 any other factors related to health care or the financing of the
12 benefits.

13 "IRC." The Internal Revenue Code of 1986, as designated and
14 referred to in section 2 of the Tax Reform Act of 1986 (Public
15 Law 99-514, 100 Stat. 2085, 2095). A reference in this chapter
16 to "IRC § " shall be deemed to refer to the identically numbered
17 section and subsection or other subdivision of such section in
18 26 United States Code (relating to Internal Revenue Code).

19 "Long-term substitute." A school employee who is
20 substituting for an officer, administrator or employee of a
21 public school entity for a qualifying period of time to be
22 determined by the Public School Employees' Benefit Board.

23 "Medicare." The programs established by Title XVIII of the
24 Social Security Act (49 Stat. 620, 42 U.S.C. § 1395 et seq.)
25 which include:

26 (1) Part A, Hospital Insurance Benefits for the Aged and
27 Disabled;

28 (2) Part B, Supplementary Medical Insurance Benefits for
29 the Aged and Disabled;

30 (3) Part C, Medicare+ Choice Program; and

1 (4) Part D, Voluntary Prescription Drug Benefit Program;
2 and
3 including any subsequent changes or additions to those programs.

4 "Member." An eligible individual who is specified as such
5 for enrollment in the health benefits program and in whose name
6 the identification card is issued. A member can be:

7 (1) A school employee.

8 (2) An annuitant.

9 (3) A transfer employee.

10 (4) An individual separated from employment with a
11 public school entity who the Public School Employees' Benefit
12 Board determines is eligible to purchase continuation of
13 coverage in the health benefits program.

14 (5) Others as approved by the Public School Employees'
15 Benefit Board.

16 "Optional benefit package." A plan or plan design
17 established by the Public School Employees' Benefit Board under
18 section 331(f) (2) (relating to health benefits program) which
19 includes specific health care services that are not part of the
20 benefit package.

21 "Participant account holder." A school employee
22 participating in a retirement health savings plan or a school
23 employee who retires or otherwise terminates employment with a
24 public school entity and becomes eligible to be reimbursed from
25 the employee's retirement health savings plan account for the
26 Internal Revenue Code of 1986 qualified health-related expenses.
27 The term shall also include the health care dependent of a
28 school employee who succeeds in interest to a deceased school
29 employee and becomes eligible to be reimbursed for health-
30 related expenses from the school employee's account.

1 "Phase-in period." The period of program operation in any
2 health care region from the time the Public School Employees'
3 Benefit Board begins implementation of mandatory participation
4 under section 332 (relating to mandatory participation and
5 optional membership) until the commencement of the first plan
6 year in which 75% of school districts in that region are
7 participating in the program.

8 "Program." The health benefits program sponsored by the
9 Public School Employees' Benefit Board in accordance with the
10 provisions of Subchapter D (relating to health benefits
11 program).

12 "Public School Code." The act of March 10, 1949 (P.L.30,
13 No.14), known as the Public School Code of 1949.

14 "Public school entity." A school district of any class,
15 intermediate unit, area vocational-technical school, charter
16 school or other school, as provided for under the act of March
17 10, 1949 (P.L.30, No.14), known as the Public School Code of
18 1949. The term shall also include the Scotland School for
19 Veterans' Children and the Scranton State School for the Deaf.

20 "Qualified majority vote." A vote by the Public School
21 Employees' Benefit Board requiring the support of three-fourths
22 of all board members.

23 "Qualifying event." A change in marital status, death of a
24 member or the change in a health care dependent's status,
25 subsequent to the commencement of coverage under this chapter,
26 or the involuntary termination of health plan coverage that was
27 obtained through a health care dependent.

28 "Reserve account." A ledger account of the Public School
29 Employees' Benefit Trust Fund created in section 336(a)(2)
30 (relating to Public School Employees' Benefit Trust Fund).

1 "Retirement system." The Public School Employees' Retirement
2 System of Pennsylvania or "system" as defined in section 8102
3 (relating to definitions).

4 "School employee." Any person regularly employed by or in a
5 public school entity for which work the person is receiving
6 regular remuneration as an officer, administrator, employee or
7 long-term substitute. The term excludes any independent
8 contractor, person compensated on a fee basis or, unless
9 otherwise determined by the Public School Employees' Benefit
10 Board, any part-time hourly school employee. The term includes
11 any employee of a public school entity who has a position for
12 which eligibility in a health care plan sponsored by the public
13 school entity is in effect as of the effective date of this
14 chapter.

15 "Supplemental benefits." Dental care, vision care and
16 employee assistance program benefits that may be offered in
17 addition to medical and hospital services and prescription drug
18 benefits.

19 "Transfer employee." A person who is not a school employee
20 who is regularly employed at a worksite in a public school
21 entity, regardless of who actually employs the person, if the
22 person is performing services previously performed by a school
23 employee.

24 "Trust fund." The Public School Employees' Benefit Trust
25 Fund created in section 336 (relating to Public School
26 Employees' Benefit Trust Fund).

27 SUBCHAPTER B

28 PUBLIC SCHOOL EMPLOYEES' BENEFIT BOARD

29 Sec.

30 311. Public School Employees' Benefit Board.

1 312. Administrative duties of board.

2 § 311. Public School Employees' Benefit Board.

3 (a) Status and membership.--The board shall be an
4 independent administrative board and shall consist of the
5 following board members:

6 (1) The Secretary of the Budget, the Secretary of
7 Education and the Insurance Commissioner or their designees.

8 (2) The Majority Leader of the Senate, the Minority
9 Leader of the Senate, the Majority Leader of the House of
10 Representatives and the Minority Leader of the House of
11 Representatives or their designees.

12 (3) One person appointed by the President pro tempore of
13 the Senate and one person appointed by the Speaker of the
14 House of Representatives.

15 (b) Designee and appointee terms.--

16 (1) A person may be a designee for a term of four years
17 and is eligible for reappointment.

18 (2) The members appointed under subsection (a) (3) shall
19 serve for a term of four years and are eligible for
20 reappointment.

21 (c) Meetings.--The board shall meet as needed to fulfill its
22 duties, and five board members shall constitute a quorum. Board
23 members shall elect the chairman of the board. Except in
24 instances where a qualified majority is required under this
25 chapter, a majority of the board members present and voting
26 shall have authority to act upon any matter. The board is
27 authorized to establish rules of its operation, including a
28 provision for the removal of board members for nonattendance.

29 (d) (Reserved).

30 (e) Oath of office.--Each board member shall take an oath of

1 office that the member will, so far as it devolves upon the
2 member, diligently and honestly administer the affairs of the
3 board and that the member will not knowingly violate or
4 willfully permit to be violated any of the provisions of law
5 applicable to this chapter. The oath shall be subscribed by the
6 board member making it and certified by the officer before whom
7 it is taken and shall be immediately filed in the office of the
8 Secretary of the Commonwealth.

9 (f) Compensation and expenses.--Board members and designees
10 who are members of the retirement system or the State Employees'
11 Retirement System shall serve without compensation. Board
12 members and designees who are members of the retirement system
13 and who are employed by a public school entity shall not suffer
14 loss of salary or wages through serving on the board. The board,
15 on request of the employer of any board member or a board
16 member's designee who is an active professional or
17 nonprofessional member of the retirement system, may reimburse
18 the employer for the salary or wages of the member or designee
19 or for the cost of employing a substitute for the board member
20 or designee while the board member or designee is necessarily
21 absent from employment to execute the duties of the board. An
22 appointed board member or board member's designee who is not a
23 legislator, the Insurance Commissioner, the Secretary of the
24 Budget or the Secretary of Education may be paid \$100 per day
25 when attending meetings, and all board members and designees
26 shall be reimbursed for any necessary expenses. When, however,
27 the duties of the board as mandated are not executed, no
28 compensation or reimbursement for expenses of board members and
29 designees shall be paid or payable during the period in which
30 the duties are not executed.

1 (g) Corporate power and legal advisor.--For the purposes of
2 this chapter, the board shall possess the power and privileges
3 of a corporation. The Office of General Counsel shall be the
4 legal advisor of the board.

5 (h) Duties of the board.--The board shall have the power and
6 authority to carry out the duties established by this chapter,
7 including the design, implementation and administration of the
8 school employee health benefits study under Subchapter C
9 (relating to school employee health benefits evaluation) and the
10 health benefits program approved under section 323 (relating to
11 plan adoption).

12 § 312. Administrative duties of board.

13 (a) Secretary.--The board shall select a secretary, who
14 shall not be a board member. The secretary shall act as chief
15 administrative officer for the board. In addition to other
16 powers and duties conferred upon and delegated to the secretary
17 by the board, the secretary shall:

18 (1) Serve as the administrative agent of the board and
19 as liaison between the board and applicable legislative
20 committees.

21 (2) Review and analyze proposed legislation and
22 legislative developments affecting the program and present
23 findings to the board, legislative committees and other
24 interested groups or individuals.

25 (3) Receive inquiries and requests for information
26 concerning the program from the press, Commonwealth
27 officials, public school entities, school employees and the
28 general public and provide information as authorized by the
29 board.

30 (b) Professional personnel.--The board may employ or

1 contract with consultants and other professional personnel as
2 needed to operate the program, including third-party
3 administrators, managed care managers, chief medical examiners,
4 actuaries, investment advisors and managers, legal counsel and
5 other professional personnel as it deems advisable. The board
6 may also contract for the services of any national or State
7 banking corporation or association having trust powers, with
8 respect to carrying out the business and other matters of the
9 program.

10 (c) Expenses.--The board shall, through the Governor,
11 annually submit to the General Assembly a budget covering the
12 administrative expenses of this chapter. The expenses, as
13 approved by the General Assembly in an appropriation bill, shall
14 be paid:

15 (1) from the General Fund; or

16 (2) starting in the first fiscal year after the
17 transition period is complete and every fiscal year
18 thereafter, from reserves and investment earnings of the
19 trust fund.

20 (d) Meetings.--The board shall hold at least four regular
21 meetings annually and other meetings as it may deem necessary.

22 (e) Records.--The board shall keep a record of all its
23 proceedings which shall be open to inspection by the public.

24 (f) Procurement.--The board shall not be subject to 62
25 Pa.C.S. Pt. I (relating to Commonwealth Procurement Code).

26 (g) Temporary regulations.--

27 (1) Notwithstanding any other provision of law to the
28 contrary and in order to facilitate the prompt implementation
29 of this chapter, regulations promulgated by the board during
30 the two years following the effective date of this chapter

1 shall be deemed temporary regulations which shall expire no
2 later than three years following the effective date of this
3 chapter or upon promulgation of regulations as generally
4 provided by law. The temporary regulations shall not be
5 subject to:

6 (i) Sections 201, 202, 203, 204 and 205 of the act
7 of July 31, 1968 (P.L.769, No.240), referred to as the
8 Commonwealth Documents Law.

9 (ii) The act of June 25, 1982 (P.L.633, No.181),
10 known as the Regulatory Review Act.

11 (2) The authority provided to the board to adopt
12 temporary regulations in this subsection shall expire two
13 years from the effective date of this chapter. Regulations
14 adopted after the two-year period shall be promulgated as
15 provided by law.

16 SUBCHAPTER C

17 SCHOOL EMPLOYEE HEALTH BENEFITS EVALUTAION

18 Sec.

19 321. School employee health benefits evaluation.

20 322. Board review.

21 323. Plan adoption.

22 § 321. School employee health benefits evaluation.

23 (a) Duty to conduct.--The board shall conduct a thorough
24 evaluation of existing health care arrangements covering school
25 employees in this Commonwealth, examine future cost forecasts
26 and collect data necessary to determine the manner in which the
27 board may construct and sponsor a health benefits program to
28 reduce long-term costs or the rate of growth of long-term costs
29 in the aggregate for public school entities while maintaining
30 packages of quality health care benefits for school employees.

1 The board shall use the Legislative Budget and Finance Committee
2 report from December 2015, as directed by Senate Resolution
3 No.250 of 2013-2014.

4 (b) Data elements.--No later than 60 days after the board is
5 constituted, the board shall determine the information necessary
6 to evaluate the existing health care arrangements covering
7 school employees in this Commonwealth and begin to collect the
8 data, including, but not limited to:

9 (1) The total cost of providing medical/hospital and
10 prescription drug coverage.

11 (2) The types and levels of coverage currently made
12 available to school employees.

13 (3) The nature of health care purchasing arrangements.

14 (4) An explanation and estimate of any financial
15 obligation of or funds owed to a public school entity related
16 to the termination of coverage under a school district-
17 sponsored health benefits plan.

18 (5) An estimate of the amount of and basis for claims
19 which may be outstanding during the transition for public
20 school entities which self-fund their coverage and the status
21 of any reserves established for such outstanding claims.

22 (6) The term and effect of collective bargaining
23 agreements governing health benefits.

24 (7) The amount and basis of any school employee cost-
25 sharing, both individual and in aggregate.

26 (8) The total amount of employer-paid costs in
27 aggregate.

28 (9) An assessment of any postretirement health care
29 benefit liabilities and claims experience data.

30 (c) Data sources.--

1 (1) All entities providing health benefit coverage for
2 eligible individuals or administering coverage for health
3 benefits under this chapter shall provide information on
4 coverage, benefits, plan design, claims data, premiums, cost-
5 sharing and financial arrangements as the board shall specify
6 to meet the requirements of subsection (b).

7 (2) Notwithstanding any law to the contrary, any agency,
8 authority, board, commission, council, department or office
9 under the jurisdiction of the Governor shall consult with the
10 Legislative Budget and Finance Committee and cooperate with
11 the board in the collection of health insurance or health
12 care coverage data as specified by the board to effectuate
13 this section in accordance with this section.

14 (d) Public school entities.--

15 (1) The Secretary of Education shall assist the board in
16 obtaining the necessary data for the evaluation of public
17 school entities and consortia.

18 (2) In the event it is necessary to facilitate the
19 collection of data from a noncooperating public school entity
20 or consortium, the Secretary of Education may request the
21 State Treasurer to cause the suspension of any payment of
22 money due to the noncooperating public school entity or
23 public school entities that are participants in a
24 noncooperating consortium on account of any appropriation for
25 schools or other purposes until the necessary information is
26 properly provided.

27 (3) A public school entity shall be notified before any
28 payments are suspended and may appeal to the secretary and
29 request an extension of time if there have been extenuating
30 circumstances preventing the timely submission of all

1 necessary information.

2 (4) In considering an appeal, the secretary may grant an
3 extension of time for the public school entity or consortium
4 to provide the necessary information before the suspension is
5 instituted.

6 (5) School entities and consortia may enter into
7 agreements with entities providing or administering coverage
8 for health care benefits under this chapter for the purpose
9 of carrying out the provisions of this section.

10 (e) Health benefit entities.--

11 (1) An entity providing or administering health
12 insurance or health care coverage for public school
13 employees, with the exception of public school entities or
14 consortia as provided for in subsection (d), shall, upon the
15 written request of the board, public school entities,
16 consortium or insured, provide claims and loss information
17 within 60 days of the request or sooner, if so determined by
18 the board.

19 (2) (i) The Insurance Commissioner, the Department of
20 Health and any other agency, authority, board,
21 commission, council, department or office under the
22 jurisdiction of the Governor having regulatory authority
23 over any entity charged under paragraph (1), hereafter
24 known as "regulating authority," shall cooperate with the
25 board, if necessary, to obtain information from any
26 insurance company, third-party administrator or other
27 administrator or provider of health insurance benefits
28 for school employees, other than a public school entity
29 or consortium.

30 (ii) Following notice and hearing, the board may

1 impose an order assessing a penalty of up to \$1,000 per
2 day upon any entity, other than a public school entity or
3 consortium, that willfully fails to comply with the
4 obligations imposed by this section.

5 (iii) If the entity does not comply with the
6 obligations imposed by this section within 15 days of an
7 order being imposed, the board shall notify the
8 regulating authority of the failure of an entity under
9 its jurisdiction to provide data as set forth in this
10 section.

11 (iv) Upon notification, the regulating authority
12 shall suspend or revoke the license of the entity or
13 otherwise suspend or revoke the entity's ability to
14 operate until such time as the board notifies the
15 regulating authority that the entity is in compliance.

16 (v) The board shall have standing to petition the
17 Commonwealth Court to seek enforcement of the order.

18 (3) This subsection shall apply to every entity
19 providing or administering group health coverage in
20 connection with providing health care benefits to school
21 employees within this Commonwealth, including plans,
22 policies, contracts or certificates issued by:

23 (i) A stock insurance company incorporated for any
24 of the purposes set forth in section 202(c) of the act of
25 May 17, 1921 (P.L.682, No.284), known as The Insurance
26 Company Law of 1921.

27 (ii) A mutual insurance company incorporated for any
28 of the purposes set forth in section 202(d) of The
29 Insurance Company Law of 1921.

30 (iii) A professional health services plan

1 corporation as defined in 40 Pa.C.S. Ch. 63 (relating to
2 professional health services plan corporations).

3 (iv) A health maintenance organization as defined in
4 the act of December 29, 1972 (P.L.1701, No.364), known as
5 the Health Maintenance Organization Act.

6 (v) A fraternal benefit society as defined in
7 section 2403 of The Insurance Company Law of 1921.

8 (vi) A hospital plan corporation as defined in 40
9 Pa.C.S. Ch. 61 (relating to hospital plan corporations).

10 (vii) Health care plans subject to the Employee
11 Retirement Income Security Act of 1974 (Public Law 93-
12 406, 88 Stat. 829), to the maximum extent permitted by
13 Federal law.

14 (viii) An administrator as defined in section 1002
15 of the act of May 17, 1921 (P.L.789, No.285), known as
16 The Insurance Department Act of 1921.

17 (ix) A person licensed under Article VI-A of The
18 Insurance Department Act of 1921.

19 (x) Any other person providing or administering
20 group health care coverage on behalf of a public school
21 entity, or accepting charges or premiums from a public
22 school entity, in connection with providing health care
23 coverage for school employees, including, but not limited
24 to, multiple employer welfare arrangements, self-insured
25 public school entities and third-party administrators.

26 (f) Confidentiality.--Any data requested by or provided to
27 the board under this section shall comply with the standards for
28 privacy established under the Health Insurance Portability and
29 Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936).

30 (g) Prepared materials.--

1 (1) Any documents, materials or information solely
2 prepared or created for the purpose of implementation of
3 subsection (b) are confidential and shall not be discoverable
4 or admissible as evidence in any civil or administrative
5 action or proceeding.

6 (2) Any documents, materials, records or information
7 that would otherwise be available from original sources shall
8 not be construed as immune from discovery or use in any civil
9 or administrative action or proceeding merely because they
10 were presented to the board.

11 (3) Nothing in this subsection shall be construed to
12 prevent publication or dissemination of the aggregate study
13 findings.

14 (h) Received materials.--

15 (1) Any documents, materials or information received by
16 the board or by a department under the jurisdiction of the
17 Governor on the board's behalf for the purpose of
18 implementation of subsection (b) shall not be discoverable
19 from the board, any department or the submitting entity, nor
20 shall they be admissible as evidence in any civil or
21 administrative action or proceeding.

22 (2) Any documents, materials, records or information
23 that would otherwise be available from original sources shall
24 not be construed as immune from discovery or use in any civil
25 or administrative action or proceeding merely because they
26 were received by the board or any department.

27 (i) Document review.--

28 (1) No current or former member or employee of the board
29 or any department shall be allowed to testify as to any
30 matters by reason of the member's or employee's review of

1 documents, materials, records or information submitted to the
2 board by the entity providing health insurance or health care
3 coverage under subsection (b).

4 (2) The enjoinder of testimony does not apply to
5 findings or actions by the board or any department that are
6 public records.

7 (j) Original source document.--In the event an original
8 source document as specified in subsection (g) is determined by
9 a court of competent jurisdiction to be unavailable from the
10 entity providing health insurance or health care coverage in a
11 civil action or proceeding, then, in that circumstance alone,
12 the board may be required pursuant to a court order to release
13 that original source document to the party identified in the
14 court order.

15 (k) Right-to-know requests.--Any documents, materials or
16 information made confidential by subsection (f) shall not be
17 subject to requests under the act of February 14, 2008 (P.L.6,
18 No.3), known as the Right-to-Know Law, or any successor statute.

19 (l) Liability.--Notwithstanding any other provision of law,
20 no person or entity providing any documents, materials or
21 information to the board, any department or other entity on the
22 board's behalf shall be held by reason of having provided the
23 documents, materials or information to have violated any
24 criminal law, or to be civilly liable under any law, unless the
25 information is false and the person providing the information
26 knew or had reason to believe that the information was false and
27 was motivated by malice toward any person directly affected by
28 the action.

29 § 322. Board review.

30 (a) Duties.--

1 (1) Upon collection of the necessary information, the
2 board shall evaluate existing public school entity health
3 care arrangements, examine options that would aggregate
4 health care coverage for public school employees, assess
5 possible cost-management improvements, solicit input from
6 public school entities and consortia identified with best
7 practice standards and establish geographic regions of this
8 Commonwealth to include all public school entities and
9 consortia.

10 (2) The board shall establish a program as provided for
11 in section 331 (relating to health benefits program) with the
12 goal of improving the overall affordability of providing
13 health care coverage for public school employees in all
14 geographic regions of this Commonwealth.

15 (3) The cost projections shall be predicated on a plan
16 that provides quality health care benefits at a level
17 consistent with those now provided to most school employees
18 through existing collective bargaining contracts and offers
19 coverage to school employees and other eligible individuals.

20 (b) Program.--No later than 10 months after the board is
21 constituted, unless a request by the board for an extension is
22 granted by the Governor, the board shall decide to implement a
23 program as provided for in section 331.

24 § 323. Plan adoption.

25 (a) Health benefits program adoption.--

26 (1) Within three months of its decision to proceed with
27 the program under section 322(b) (relating to board review),
28 the board shall verify that implementation of a program will
29 result in reduction in the Statewide aggregate cost of the
30 purchase of benefits or the rate of growth of such costs and

1 adopt a proposed plan for the implementation of the program.

2 (2) The proposed plan shall be in writing and shall
3 include a detailed description of the program and the
4 transition procedures necessary to phase in and implement the
5 program. The board's adoption of a proposed plan shall
6 require approval by a qualified majority vote.

7 (b) Parameters of program.--The description of the program
8 shall at minimum include:

9 (1) The designation of the health care regions of this
10 Commonwealth in which each public school entity shall
11 participate in the program.

12 (2) The eligibility requirements for a school employee
13 and the employee's health care dependents to qualify for
14 participation in the program.

15 (3) The identification of the benefits and supplemental
16 benefits to be included as part of a benefit package in each
17 health care region.

18 (4) Disclosure of any member cost-sharing contributions,
19 whether expressed as a target percentage of overall program
20 costs or individually determined as a percentage of salary
21 and whether the cost-sharing is uniform with the health care
22 region.

23 (5) The procedure by which the board will select an
24 administrator for the program in each health care region.

25 (6) The design of the pool or pools in each health care
26 region that would be established to aggregate public school
27 entities for the purpose of purchasing services and managing
28 health insurance risks.

29 (7) The requirements for electronic eligibility
30 transmission between the board and other participating

1 entities, including public school entities, consortia and the
2 retirement system.

3 (8) Financial and accounting plans, including the
4 establishment of any necessary reserves or escrow accounts
5 with carriers.

6 (c) Transition procedures.--The description of the steps to
7 phase in and implement the program shall at minimum include:

8 (1) A determination of when benefit packages in the
9 health care regions shall become the mandatory program
10 offering for eligible individuals in a public school entity
11 as health care benefits for school employees are normalized
12 on a Statewide basis.

13 (2) A determination, based on the size and structure of
14 any risk pool established within a health care region, as to
15 when the program would be phased in within that health care
16 region.

17 (3) The interim steps to aggregate public school
18 entities into a health care regional pool, including any best
19 practice standards and benchmarks to be applied to new or
20 existing consortia, or public school entities, or in any
21 selection process to build a health care regional pool.

22 (4) Transition rules on member cost-sharing
23 responsibility until any member cost-sharing is required
24 within a health care region.

25 (5) Transition rules to limit any negative financial
26 impact on a public school entity required to purchase health
27 care coverage through a health care regional pool and to
28 normalize contribution rates for all participating public
29 school entities within the same health care region.

30 (d) Legislative and public review.--

1 (1) The board shall publish the provisions of any
2 proposed plan adopted under this section in the Pennsylvania
3 Bulletin and make it available on the board's publicly
4 accessible Internet website. Following publication, the board
5 shall schedule at least eight public hearings to solicit
6 public input on the plan. The hearings shall be conducted in
7 Philadelphia County, Allegheny County and the Northeast,
8 Northwest, Southeast, Southwest, North Central and South
9 Central regions of this Commonwealth.

10 (2) The board shall submit the provisions of any
11 proposed plan adopted under this section to the chairperson
12 and minority chairperson of the Education Committee of the
13 Senate and the chairperson and minority chairperson of the
14 Education Committee of the House of Representatives. The
15 committees shall have 45 days to review the proposed plan and
16 submit comments to the board.

17 (e) Final plan adoption.--

18 (1) Upon completion of the public hearings under
19 subsection (d)(1) and expiration of the committee review
20 under subsection (d)(2), the board shall review all testimony
21 and comments received regarding the proposed plan. The board
22 may, subject to a qualified majority vote, make changes and
23 adjustments to the plan to effectuate this chapter.

24 (2) Within 90 days of publishing the proposed plan,
25 under subsection (d)(1), the board shall publish the final
26 plan, as adopted by the board, in the Pennsylvania Bulletin
27 and on the publicly accessible Internet website of the
28 Department of Education.

29 (f) Failure to reach consensus.--If the board fails to
30 achieve agreement and approve a plan for implementing a program

1 by a qualified majority vote, the board shall report as to its
2 findings and reasons preventing agreement on a plan to the
3 Governor, the President pro tempore of the Senate and the
4 Speaker of the House of Representatives.

5 SUBCHAPTER D

6 HEALTH BENEFITS PROGRAM

7 Sec.

8 331. Health benefits program.

9 332. Mandatory participation and optional membership.

10 333. Continuation of coverage and transfer employees.

11 334. Partnership for stable benefits funding.

12 335. Powers and duties of board.

13 336. Public School Employees' Benefit Trust Fund.

14 337. Misrepresentation, refusal to cooperate and fraud.

15 338. Miscellaneous provisions.

16 § 331. Health benefits program.

17 (a) Creation.--Upon adoption of a health plan under section
18 323(e) (relating to plan adoption), the board shall proceed to
19 initiate and sponsor an employee benefits program for eligible
20 individuals.

21 (b) Program design.--The board shall design a program which
22 follows the parameters of the plan and transition procedures as
23 established in section 323. The board may develop and administer
24 the program itself or operate through any legal entity
25 authorized by law to do so, including consortia selected through
26 a competitive process as administrators, and the program may be
27 developed and administered differently within each health care
28 region as long as a benefit package, as determined by the board,
29 is available to eligible individuals. The program may also be
30 administered in whole or in part on a fully insured or self-

1 funded basis at the board's sole discretion.

2 (c) Implementation.--The board may:

3 (1) Establish pools for selected areas of coverage, such
4 as pharmacy services, transplants, stop-loss insurance,
5 health care management or other possible areas that in the
6 board's judgment can be offered to health care regions on a
7 more stable and cost-effective basis. The board may offer
8 separate plans to public school entities and consortia prior
9 to the phase-in of the benefit package.

10 (2) Make the program available in some health care
11 regions before it is made available within all health care
12 regions.

13 (d) Eligibility requirements.--The board may determine
14 eligibility requirements for benefits and adopt rules and
15 regulations to bind all eligible individuals. No coverage shall
16 be provided for eligible individuals without payment being made,
17 except under circumstances as may be established by the board
18 under reasonable guidelines.

19 (e) Coverage and plan selection.--The board may select and
20 contract with insurance carriers, health maintenance
21 organizations, pharmacy benefit managers, third-party
22 administrators, reinsurers and any other entities necessary to
23 provide a range of benefit packages to eligible individuals
24 through the program. The board may determine the nature, amount
25 and duration and discontinuation of coverage to be provided.

26 (f) Benefits.--

27 (1) A benefit package shall be established by the board
28 that shall include coverage for medical and hospital
29 services, prescription drugs and may include supplemental
30 benefits in amounts to be determined by the board.

1 (2) Within each health care region, the board shall
2 approve and make available to each eligible individual
3 affiliated with a public school entity which is participating
4 in the program the following:

5 (i) A health care plan that includes coverage
6 determined by the board.

7 (ii) Any optional benefit plan, as approved by the
8 board, which allows an eligible individual to purchase
9 coverage that is not included in the benefit package,
10 provided that any cost over and above the cost of the
11 health care plan in subparagraph (i) must be paid by the
12 member except as otherwise provided in section 338(f)(2)
13 (relating to miscellaneous provisions).

14 (3) The detailed basis on which payment of benefits is
15 to be made shall be specified in writing. The benefits
16 provided in this chapter are subject to change or
17 modification by the board from time to time as the board, in
18 its discretion, may determine. All changes or modifications
19 shall be specified in writing and communicated to members
20 within a reasonable period of time.

21 § 332. Mandatory participation and optional membership.

22 (a) Mandatory participation.--All public school entities
23 shall participate in the program on a health care regional
24 basis.

25 (b) Transition plan.--

26 (1) When the board determines under subsection (a) that
27 a public school entity shall be required to participate in
28 the program, the public school entity or consortium in which
29 the public school entity is a participant shall, within a
30 reasonable period of time as determined by the board, present

1 to the board a transition plan with a schedule for the
2 eventual migration of school employees into the program.

3 (2) The board shall review the transition plan with the
4 public school entity or consortium and make any necessary
5 modifications before granting approval of the plan.

6 (3) A public school entity or consortium shall be
7 subject to adherence to the transition plan approved by the
8 board.

9 (c) Extensions of time.--The board shall give due
10 consideration to a transition plan submitted under subsection
11 (b) that includes a request for an extension of time. Requests
12 may be submitted by, but shall not be limited to, any of the
13 following:

14 (1) A public school entity that participates in a
15 consortium where an extension of time is necessary for the
16 rundown and proper termination of the consortium's program.

17 (2) A public school entity that participates in a
18 consortium where the withdrawal of the public school entity
19 may undermine the financial stability of the consortium.

20 (3) A public school entity or a consortium which will
21 incur a significant financial penalty under terms of a
22 contract with an insurance carrier or other provider of
23 health care coverage for a contract in existence on or before
24 January 1, 2017.

25 (4) A public school entity or consortium which will
26 incur a significant financial cost, including fees, penalties
27 or other contractual financial obligations, related to the
28 termination of coverage under a contract of insurance or, in
29 the case of a public school entity that self-insures,
30 insufficient reserves to pay claims incurred during the

1 previous coverage year, if the obligation relates to a plan
2 of coverage that was in existence on or before January 1,
3 2017, and the public school entity or consortium provides the
4 board with a financial plan for meeting these obligations.

5 (d) Optional membership.--No school district of the first
6 class, as classified under section 202 of the Public School
7 Code, shall be required to participate in the program, except as
8 may be agreed upon under terms of a collective bargaining
9 agreement covering a majority of employees of a school district
10 of the first class. Upon a school district of the first class
11 entering participation in the program pursuant to a collective
12 bargaining agreement, continued participation in the program
13 shall become mandatory.

14 (e) Prohibited membership.--A public school entity that, on
15 the effective date of this section, participates in the
16 Pennsylvania Employees' Benefit Trust Fund shall be prohibited
17 from participating in the program, and employees of the public
18 school entity may not be members of the program.

19 (f) Transition of employees.--

20 (1) A public school entity that provides some or all of
21 its employees with health benefits through another health
22 care plan by virtue of one or more collective bargaining
23 agreements, entered into prior to the effective date of this
24 section, shall not be required to join the program until
25 expiration of the collective bargaining agreements.

26 (2) The public school entity and some or all of its
27 employees or bargaining representatives of its employees may
28 by mutual agreement and approval of the board join the
29 program at an earlier date.

30 (3) Renewal or extension of a collective bargaining

1 agreement shall constitute its expiration for the purpose of
2 this subsection.

3 § 333. Continuation of coverage and transfer employees.

4 (a) Annuitants.--

5 (1) Upon retirement, an annuitant eligible under
6 paragraph (1) or (2) shall have the option to elect coverage
7 in the program, including coverage for any eligible health
8 care dependent.

9 (2) The annuitant must pay the full cost of the
10 coverage, unless a public school entity has agreed, separate
11 from any requirements of the program, to pay toward the
12 coverage pursuant to an award of health benefits under a
13 written policy or agreement collectively bargained or
14 otherwise entered into by the public school entity.

15 (3) The board shall annually determine the cost of
16 coverage as follows:

17 (i) For an annuitant who is enrolled in the program
18 under section 513 of the Public School Code or an
19 annuitant who pursuant to any award of health benefits
20 for annuitants under a written policy or agreement
21 collectively bargained or otherwise entered into by the
22 public school entity prior to the effective date of this
23 section, payments shall be based on the total
24 contribution rate established under section 334(b) and
25 (c) (relating to partnership for stable benefits funding)
26 for a school employee in the same health care region,
27 plus a 2% administrative fee.

28 (ii) For an annuitant, other than an annuitant
29 qualified for coverage under subparagraph (i), payments
30 shall be made on the same basis as an annuitant qualified

1 for coverage under subparagraph (i), except as determined
2 as follows:

3 (A) The board's actuary shall periodically
4 review and determine the separate cost of providing
5 continuation of coverage to annuitants under this
6 subparagraph, along with an assessment of its impact
7 on the cost of providing coverage to members who are
8 school employees and annuitants qualified for
9 coverage under subparagraph (i). The review and
10 assessment shall first occur as part of the school
11 employee health benefits evaluation conducted under
12 section 321 (relating to school employee health
13 benefits evaluation) and its results shall be
14 considered in the development of parameters under
15 section 323(b) (relating to plan adoption).

16 (B) The board shall consider the findings of the
17 actuary in clause (A) to determine if there is a
18 substantial impact on the cost of providing coverage
19 to members who are school employees and annuitants
20 qualified for coverage under subparagraph (i). If
21 there is a substantial cost impact, the board shall
22 require payments for an annuitant qualified to elect
23 coverage in the program under this subparagraph to be
24 separately determined and the contribution rate to be
25 based on the disaggregated cost of providing the
26 coverage, plus a 2% administrative fee.

27 (b) Separation from service.--

28 (1) The board shall determine the eligibility of
29 members, other than annuitants covered by subsection (a), to
30 elect continuation of coverage in the program upon separation

1 from service as a school employee.

2 (2) The member must pay the full cost of the coverage in
3 the member's health care region, plus an administrative fee
4 to be set by the board.

5 (3) The board shall, at minimum, provide continuation of
6 coverage eligibility that meets the requirements of Title X
7 of the Employee Retirement Income Security Act of 1974
8 (Public Law 93-406, 88 Stat. 829) and provide the
9 continuation of coverage options required under 51 Pa.C.S. §
10 7309 (relating to employment discrimination for military
11 membership or duty) for members on military leave.

12 (c) Transfer employees.--

13 (1) The board may approve the participation of transfer
14 employees in the program, provided that any position for
15 which a transfer employee who is provided health benefits in
16 a health care plan sponsored by a public school entity
17 through an agreement that was in existence on or before
18 January 1, 2017, with the transfer employee's employer shall
19 be allowed to participate in the program.

20 (2) The board shall establish the terms and conditions
21 necessary for participation in the program, including the
22 cost of coverage to be paid by the third-party entity which
23 shall be based on the full cost of coverage in the health
24 care region as determined by the board, plus an
25 administrative fee.

26 (3) The sponsoring public school entity shall, on behalf
27 of the board, collect the payments for transfer employees
28 from the third-party entity.

29 § 334. Partnership for stable benefits funding.

30 (a) Basis of partnership.--In recognition that the long-term

1 viability and stability of the program will require public
2 school entity employers, members and the Commonwealth to be
3 partners both in sustaining the program as well as managing the
4 costs of reasonable and appropriate benefit packages, the board
5 shall determine for each plan year and in each region the
6 payments due from public school entities, from members and from
7 the Commonwealth.

8 (b) Determination of contribution rate.--The board shall
9 determine for each plan year the total amount of the
10 contributions by the Commonwealth, public school entities and
11 school employees required to provide projected benefits for that
12 plan year under the benefit packages on behalf of each school
13 employee member and the employee's eligible health care
14 dependents. The contribution rate shall consist of the amount
15 required to provide the benefit packages, including appropriate
16 reserves and administrative expenses, and shall be adjusted for
17 each health care region to reflect the cost of benefits in that
18 health care region. The contribution rates may differentiate
19 between single coverage for members only and types of family
20 coverage, as determined by the board.

21 (c) Certification of rate.--The board shall certify the
22 contribution rate for each health care region to the
23 Commonwealth and public school entities, including the payments
24 that shall be due from public school entities, from members and
25 from the Commonwealth. The certifications shall be regarded as
26 final and not subject to modification by the Secretary of the
27 Budget.

28 (d) Commonwealth cost share.--The Commonwealth shall make a
29 contribution to offset a portion of the cost increase consistent
30 with subsections (e) and (f) for any plan year in which the

1 board determines that the aggregate cost of providing the
2 benefit packages on behalf of members who are school employees
3 and their eligible health care dependents exceeds the sum of:

4 (1) the projected carry-over balance for the plan year
5 in the employer contribution account after all required
6 transfers have been made to the employee benefits account for
7 the prior year; and

8 (2) any employee cost-sharing for the plan year.

9 (e) Budget submission and appropriation.--If the board
10 determines that the requirements of subsection (d) have been
11 met, all of the following shall occur:

12 (1) The board shall submit to the Secretary of the
13 Budget an itemized budget specifying the amount necessary to
14 be appropriated by the Commonwealth consistent with
15 subsection (f). The budget submission shall be on a form and
16 in a manner determined by the Secretary of the Budget and
17 shall occur no later than November 1 of the fiscal year
18 preceding the plan year for which funds are requested.

19 (2) Upon appropriation by the General Assembly to
20 provide for the obligations of the Commonwealth, the amount
21 shall be paid by the State Treasurer through the Department
22 of Revenue into the employer contribution account within 30
23 days of receipt of the requisition presented each month by
24 the board.

25 (f) Limitation on Commonwealth contribution.--

26 (1) The Commonwealth shall not be obligated to pay any
27 amount beyond that which is appropriated by the General
28 Assembly. The amount requested by the board under subsection
29 (e) (1) shall not exceed the sum of any amount paid by the
30 Commonwealth for the fiscal year preceding the plan year for

1 which funds are requested and the lesser of:

2 (i) fifty percent of the amount that the board
3 determines is necessary to meet the increase in the
4 contribution rate on behalf of members who are school
5 employees determined under subsection (b); and

6 (ii) the product of the total revenue transferred in
7 the prior plan year from the employer contribution
8 account to the employee benefits account and the most
9 recent annual percent change in the per enrollee private
10 health insurance premium for all benefits, as defined in
11 the National Health Expenditure Data published by the
12 Centers for Medicare and Medicaid Services, Department of
13 Health and Human Services.

14 (2) If any excess revenue in the employer contribution
15 account will be applied to payments for the plan year, then
16 the excess revenue shall be used to reduce the calculation
17 under this subsection in proportion to the Commonwealth's
18 share of the total increase in the contribution rate on
19 behalf of active members for the plan year.

20 (g) Additional optional contribution.--Notwithstanding the
21 limitation in subsection (f), the General Assembly may
22 appropriate additional revenue to the employer contribution
23 account in any fiscal year.

24 (h) Allocation of Commonwealth contribution.--

25 (1) Any contribution made by the Commonwealth under this
26 section shall be used to offset an increase in the
27 contribution rate paid in a health care region by public
28 school entities on behalf of members who are school employees
29 and their eligible health care dependents and to maintain any
30 offset that was paid in a prior year.

1 (2) The Commonwealth contribution shall be allocated to
2 offset a portion of each participating public school entity's
3 cost of coverage on a per-member basis, for members who are
4 school employees and their eligible health care dependents,
5 based on the public school entity's market value/income aid
6 ratio using the most recent data provided by the Department
7 of Education.

8 (3) For any public school entity that is not assigned a
9 market value/income aid ratio by the Department of Education,
10 the Commonwealth contribution shall not be adjusted based on
11 a market value/income aid ratio.

12 (4) For the purpose of this subsection, "market
13 value/income aid ratio" shall have the same meaning given to
14 it in the Public School Code.

15 (i) Contributions on behalf of school employees.--

16 (1) Consistent with any transition procedure under
17 section 323(c)(5) (relating to plan adoption), each public
18 school entity shall be required to make payments to the trust
19 fund on behalf of members who are school employees and their
20 eligible health care dependents based on the contribution
21 rate certified by the board in subsection (c).

22 (2) The increase in payments made from one year to the
23 next by public school entities on behalf of school employees
24 shall be equal to or greater than the increase in payment
25 from one year to the next made under subsection (d),
26 excluding any additional optional contribution made by the
27 Commonwealth under subsection (g).

28 (j) Deduction from appropriations.--In the event a public
29 school entity does not make the required payment in the time
30 allotted as determined by the board, the Secretary of Education

1 and the State Treasurer shall deduct and pay into the trust fund
2 from the amount of any money due to any public school entity on
3 account of any appropriation for schools or other purposes the
4 amount due to the trust fund as certified by the board and as
5 remains unpaid on the date such appropriations would otherwise
6 be paid to the public school entity by the Department of
7 Education, and the amount shall be credited to the public school
8 entity's account in the trust fund.

9 (k) Transition.--

10 (1) Until any transition under section 323(c)(5) has
11 been completed, the payments made by each public school
12 entity shall be no less than the total amount paid by the
13 public school entity to provide, purchase and administer
14 health care benefits to members who are school employees and
15 their eligible health care dependents in the year before
16 implementation of the program.

17 (2) Any contributions received by the public school
18 entity from school employees in the form of cost-sharing
19 payments for health care coverage shall be excluded from the
20 amount.

21 § 335. Powers and duties of board.

22 (a) Powers.--In addition to the powers granted by other
23 provisions of this chapter, the board shall have the powers
24 necessary or convenient to carry out this subchapter, including,
25 but not limited to, the power to:

26 (1) Determine appropriate geographic health care regions
27 for the administration of the program and make changes to the
28 regions as necessary.

29 (2) Formulate and establish the conditions of
30 eligibility, including eligibility for health care dependent

1 coverage for members, to include consideration if a member or
2 health care dependent is covered, or eligible for coverage,
3 under another employer-sponsored group health insurance plan,
4 provisions for payment of benefits and all other provisions
5 that may be required or necessary to carry out the intent and
6 purpose of the program.

7 (3) Determine and make necessary changes to the benefit
8 packages and benefit structure of the program.

9 (4) Establish copayments, annual deductibles,
10 coinsurance levels, exclusions, formularies and other
11 coverage limitations and payment responsibilities of members
12 incurred at the time of service.

13 (5) Set and adjust member cost-sharing contributions to
14 be expressed as a target percentage of overall program costs
15 or individually determined as a percentage of salary. The
16 board shall determine whether member cost-sharing shall be
17 uniform across all health care regions or shall vary by
18 health care region.

19 (6) Impose and collect necessary fees and charges.

20 (7) Determine enrollment procedures.

21 (8) Establish procedures for coordination of benefits
22 with other plans and third-party payers, including
23 coordinating benefits or contracting directly with Medicare.

24 (9) Establish a plan with the retirement system to
25 coordinate health care coverage for annuitants between the
26 program established by this chapter and the group health
27 insurance program sponsored by the retirement system under
28 the provisions of Chapter 89 (relating to group health
29 insurance program) and to coordinate the sharing of
30 information pertaining to premium assistance payment

1 transfers.

2 (10) Set and adjust contribution rates sufficient to
3 maintain the adequacy of any reserves established by this
4 chapter and to fully fund the benefits offered by and to pay
5 for the administrative expenses related to the program.

6 (11) Set and adjust costs for members electing to
7 continue coverage upon retirement or separation from
8 employment. The board may establish different cost rates to
9 be charged for different categories of members electing to
10 continue coverage.

11 (12) Purchase insurance or employ self-insurance, alone
12 or in combination, to provide benefits as shall be determined
13 by the board.

14 (13) Establish appropriate reserves based on generally
15 accepted standards as applied by Federal and State regulators
16 to similar types of plans.

17 (14) Issue self-liquidating debt or borrow against
18 contributions, payments or other accounts receivable for the
19 purposes of prepaying any health benefits, establishing
20 reserves or otherwise lowering the cost of coverage.

21 (15) Establish procedures to verify the accuracy of
22 statements and information submitted by eligible individuals
23 on enrollment forms, claim forms or other forms.

24 (16) Receive and collect all contributions due and
25 payable to the accounts or delegate to a public school entity
26 or claims processor the right to receive contributions,
27 payments or perform ministerial functions required to assert
28 the board's rights. In so doing, the board shall have the
29 right to:

30 (i) maintain any and all actions and legal

1 proceedings necessary for the collection of
2 contributions; and

3 (ii) prosecute, defend, compound, compromise,
4 settle, abandon or adjust any actions, suits,
5 proceedings, disputes, claims, details and things related
6 to the accounts and program.

7 (17) Establish procedures to hear and determine any
8 claims and controversies under this chapter.

9 (18) Promulgate rules and regulations regarding the
10 administration of the program, including the establishment of
11 the plan year.

12 (19) Ensure that a public school entity provides
13 detailed information about the program to eligible employees
14 at least 90 days before program coverage begins to be offered
15 to school employees.

16 (20) Seek and take all necessary steps to retain
17 eligibility for the members, public school entities and the
18 Commonwealth to receive tax-preferred or tax-free treatment
19 under the IRC for contributions to and earnings of the trust
20 fund.

21 (21) Enter into agreements with entities providing or
22 administering coverage for health benefits under this chapter
23 for the electronic exchange of data between the parties at a
24 frequency as determined by the board.

25 (22) Perform and do any and all such actions and things
26 that may be properly incidental to the exercising of powers,
27 rights, duties and responsibilities of the board.

28 (23) Determine best practice standards and benchmarks
29 for consortia in any selection process to build health care
30 regional pools, including the power to require a consortium

1 to merge with another consortium. The board may require
2 consortia, as a condition of serving as an administrator for
3 the program, to accept any public school entity applying to
4 join and participate in a consortium.

5 (24) Enter into agreements with any public school entity
6 or consortium to implement the program developed under this
7 chapter and delegate powers necessary to administer coverage
8 for health benefits.

9 (b) Administrative duties of board.--In addition to other
10 duties of the board provided in this chapter, the duties
11 specified in this section shall be afforded to the board for the
12 implementation of this section.

13 (c) Regulations and procedures.--The board shall, with the
14 advice of the Office of General Counsel and the actuary, adopt
15 and promulgate rules and regulations for the uniform
16 administration of the program. The actuary shall approve in
17 writing all computational procedures used in the calculation of
18 contributions and the cost of benefits, and the board shall by
19 resolution adopt the computational procedures prior to their
20 application by the board. The rules, regulations and
21 computational procedures as so adopted from time to time and as
22 in force and effect at any time, together with tables that are
23 adopted as necessary for the calculation of contributions and
24 the cost of benefits, shall be effective as specified in this
25 chapter.

26 (d) Data.--The board shall keep in electronic format records
27 of claims, eligibility and other data as are stipulated by the
28 actuary in order that an annual contribution rate determination
29 for each health care region and various program options can be
30 completed within six months of the close of each plan year. The

1 board shall have final authority over the means by which data is
2 collected, maintained and stored and in so doing shall protect
3 the rights of its membership as to privacy and confidentiality.

4 (e) Annual financial statement.--The board shall prepare and
5 have published within six months following the end of each plan
6 year a financial statement showing the condition of the trust
7 fund as of the end of the previous plan year. The board shall
8 submit said financial statement to the Governor and shall make
9 copies available to public school entities for the use of the
10 school employees and the public.

11 (f) Independent audit.--The board shall provide for an
12 annual audit of the trust fund by an independent certified
13 public accounting firm.

14 (g) Manual of regulations.--The board shall, with the advice
15 of the Office of General Counsel and the actuary, prepare within
16 six months of the commencement of a program adopted under this
17 chapter a manual incorporating rules and regulations consistent
18 with the provisions of this chapter for each participating
19 public school entity that shall make information contained in
20 the manual available to school employees. The board shall
21 thereafter advise public school entities within 90 days of any
22 changes in rules and regulations due to changes in the law or
23 due to changes in administrative policies.

24 (h) Annual budget.--The board shall establish an annual
25 budget for the program and make disbursements from the trust
26 fund that are consistent with the budget.

27 (i) Program assistance.--The board may solicit and accept
28 grants, loans and other aid from any person, corporation or
29 other legal entity or from the Federal, State or local
30 government and participate in any Federal, State or local

1 government program if necessary for prudent management of the
2 program.

3 (j) Functions.--The board shall perform other functions as
4 are required for the execution of this chapter and shall have
5 the right to inspect employment records of public school
6 entities.

7 (k) Qualified majority voting provision.--A qualified
8 majority vote shall be required on any matter voted upon by the
9 board affecting the development of or any change in:

10 (1) The plan to implement the program adopted under
11 section 323(e) (relating to plan adoption).

12 (2) The benefit packages, benefit options or plan
13 designs offered by the program to covered employees.

14 (3) Membership eligibility criteria.

15 (4) The addition, deletion or significant change in
16 status of an insurance carrier, benefits administrator or
17 other major contractor in the administration of benefits, or
18 the addition, deletion or significant change in status of a
19 health care provider network.

20 (5) Any determination on the use of excess fund
21 payments.

22 (6) The overall per-employee cost of the benefit package
23 to the trust fund and any public school entity funding and
24 member cost-sharing responsibilities.

25 (7) Cost containment measures such as managed care,
26 wellness centers and large case management.

27 (8) Contracts valued at more than \$25,000,000.

28 (9) Changes in trust document, bylaws or any major
29 internal operating policies or procedures, such as claims
30 appeal procedures, not to include routine ministerial

1 functions.

2 (10) Approve employment of and contracts with
3 consultants and professional personnel.

4 (1) Duties conferred upon secretary.--The secretary of the
5 board shall supervise a staff of administrative, technical and
6 clerical employees engaged in recordkeeping and clerical
7 processing activities in maintaining files of members,
8 accounting for contributions, processing payments, preparing
9 required reports and counseling.

10 § 336. Public School Employees' Benefit Trust Fund.

11 (a) Establishment of trust fund.--The Public School
12 Employees' Benefit Trust Fund is established in the State
13 Treasury. The money in the trust fund is appropriated on a
14 continuing basis and shall be used exclusively for the purposes
15 specified in this chapter. All of the assets of the trust fund
16 shall be maintained and accounted for, separate from all other
17 funds and money of the Commonwealth. The Treasury Department
18 shall credit to the trust fund all money received from the
19 Department of Revenue arising from the contributions required
20 under this chapter and all earnings from investments or money of
21 the trust fund. The board shall establish and maintain several
22 ledger accounts as follows:

23 (1) The employee benefits account shall be the ledger
24 account to which shall be credited the payments from section
25 333 (relating to continuation of coverage and transfer
26 employees), payments from members for cost sharing and any
27 additional member-paid cost associated with optional benefit
28 packages elected by members and transfers from the employer
29 contribution account as provided in paragraph (3). All
30 earnings derived from investment of the assets of the

1 employee benefits account shall be credited to this account.
2 The board may separately invest the amounts in the employee
3 benefits account in a prudent manner intended to maximize the
4 safety of the capital contained in the employee benefits
5 account. Payments for member health care benefits and the
6 direct administrative expenses of the board related to the
7 administration of the employee benefits program, as provided
8 in section 312(d) (relating to administrative duties of
9 board), shall be charged to this account.

10 (2) A restricted reserve account, or more than one
11 account if the board determines it necessary to have
12 segregated accounts, is established within the trust fund for
13 the purpose of establishing and maintaining a reserve or
14 separate reserves sufficient:

15 (i) to pay the expected claims experience of the
16 program in the event the board elects to self-fund all or
17 a portion of the program for any plan years;

18 (ii) to prefund the accrued liability for any
19 postretirement health care benefits earned by employees
20 enrolled in the program under section 333(a) (3) (i)
21 (relating to continuation of coverage and transfer
22 employees) as the benefit is earned by the employees; and

23 (iii) to amortize the unfunded actuarial accrued
24 liability for postretirement health care benefits already
25 earned by employees and annuitants under section 333(a)
26 (3) (i) in the event the board elects to assume all or a
27 portion of the liability. The board shall use an
28 amortization period that does not exceed 30 years for
29 this purpose.

30 The board shall annually establish through an actuary

1 retained by the board the amount necessary, if any, to
2 establish and maintain a reserve or separate reserves
3 sufficient for the purposes of this paragraph. Any money
4 needed to maintain the reserve or separate reserves
5 established under this paragraph shall be collected through
6 the adjustment of the contribution rate established under
7 section 334(b) and (c) (relating to partnership for stable
8 benefits funding) or through other available sources. The
9 money in any reserve account may be invested by the board
10 separate from other money of the trust fund. All earnings
11 derived from investment of the assets of any reserve account
12 shall be credited to the reserve account.

13 (3) The employer contribution account shall be the
14 ledger account to which shall be credited all contributions
15 made by the Commonwealth as determined in accordance with
16 section 334(e) and payments from public school entities as
17 determined in accordance with section 334(i), as well as all
18 earnings derived from the investment of the assets of the
19 employer contribution account. The total amount of the
20 Commonwealth and public school entity contributions required
21 to provide the benefit packages on behalf of all members who
22 are school employees and their eligible health care
23 dependents shall be transferred on a monthly basis to the
24 employee benefits account.

25 (b) Composition.--The trust fund shall consist of:

26 (1) All payments made by members or received from the
27 Commonwealth and public school entities and all interest,
28 earnings and additions to the payments.

29 (2) Any other money, public or private, appropriated or
30 made available to the board for the trust fund or any reserve

1 account from any source and all interest, earnings and
2 additions thereto.

3 (c) Administration of trust and associated funds.--The
4 assets of the trust fund shall be preserved, invested and
5 expended solely under and for the purposes set forth in this
6 chapter.

7 (d) Control and management of trust fund.--

8 (1) The board shall have exclusive control and
9 management of the trust fund and full power to invest and
10 manage the assets of each account of the trust fund as a
11 prudent investor would, by considering the purposes, terms
12 and other circumstances of each account and by pursuing an
13 overall investment strategy reasonably suited to the trust
14 fund.

15 (2) The board may invest in every kind of property and
16 type of investment, including, but not limited to, mutual
17 funds and similar investments, consistent with this
18 subsection.

19 (3) In making investment and management decisions, the
20 board shall consider, among other things, to the extent
21 relevant to the decision or action:

22 (i) the size and nature of the account;

23 (ii) the liquidity and payment requirements of the
24 account;

25 (iii) the role that each investment or course of
26 action plays in the overall investment strategy;

27 (iv) to the extent reasonably known to the board,
28 the needs for present and future payments; and

29 (v) the reasonable diversification of assets, taking
30 into account the purposes, terms and other circumstances

1 of the trust fund and the requirements of this section.

2 (e) Custodian of trust fund.--The State Treasurer shall be
3 the custodian of the trust fund.

4 (f) Name for transacting business.--By the name of "The
5 Public School Employees' Benefit Trust Fund," all of the
6 business of the trust fund shall be transacted, its fund
7 invested, all requisitions for money drawn and payments made and
8 all of its cash and securities and other property shall be held,
9 except that, any other law to the contrary notwithstanding, the
10 board may establish a nominee registration procedure for the
11 purpose of registering securities in order to facilitate the
12 purchase, sale or other disposition of securities.

13 (g) Payment from trust fund.--All payments from the trust
14 fund shall be made by the State Treasurer in accordance with
15 requisitions signed by the secretary of the board or the
16 secretary's designee. The board shall reimburse the State
17 Treasurer for the cost of making disbursements from the trust
18 fund.

19 (h) Fiduciary status of board.--Board members, employees of
20 the board and their agents shall stand in a fiduciary
21 relationship to the members regarding the investments and
22 disbursements of any of the money of the trust fund and shall
23 not profit either directly or indirectly with respect thereto.

24 (i) Transfers.--The board may transfer money among the
25 various accounts of the trust fund, including any reserve
26 accounts established under subsection (a) (2), as may be
27 necessary to satisfy the provisions of this chapter. Transfers
28 from funds retained in the reserve account under subsection (a)
29 (2) (i) may be made only for the payment of claims or expected
30 claims as determined by the actuary retained by the board.

1 Transfers from funds retained in the reserve account under
2 subsection (a) (2) (ii) or (iii) may be made only for paying
3 toward the cost of providing health care benefits to annuitants
4 enrolled in the program under section 333(a) (3) (i).

5 (j) Additional powers of board.--The board may:

6 (1) Adopt, from time to time, appropriate investment
7 policy guidelines and convey the same to those fiduciaries
8 who have the responsibility for the investment of funds.

9 (2) Retain such portion of the money of the accounts in
10 cash or cash balances as the board may deem desirable,
11 without any liability or interest thereon.

12 (3) Settle, compromise or submit to arbitration all
13 claims or damages due from or to the accounts, commence or
14 defend any legal, equitable or administrative proceedings
15 brought in connection with the program and represent the
16 trust fund in all proceedings under this paragraph.

17 (k) Additional duties of secretary.--The secretary of the
18 board shall serve as liaison to the Treasury Department, the
19 Department of the Auditor General and between the board and the
20 investment counsel and the mortgage supervisor in arranging for
21 investments to secure maximum returns to the trust fund.

22 § 337. Misrepresentation, refusal to cooperate and fraud.

23 (a) Misrepresentation.--If the eligible individual or anyone
24 acting on behalf of an eligible individual makes a false
25 statement or withholds information on the application for
26 enrollment with intent to deceive or affect the acceptance of
27 the enrollment application or the risks assumed by the program
28 or otherwise misleads the board, the board shall be entitled to
29 recover its damages, including legal fees, from the eligible
30 individual or from any other person responsible for misleading

1 the board and from the person for whom the benefits were
2 provided. Any material misrepresentation on the part of the
3 eligible individual in making application for coverage or any
4 application for reclassification or for service under the
5 program shall render the coverage under the program null and
6 void.

7 (b) Refusal to cooperate.--

8 (1) The board may refuse to pay benefits or cease to pay
9 benefits on behalf of an eligible individual who fails to
10 sign any document deemed by the board to be relevant to
11 protecting its subrogation rights or certifying eligibility
12 or who fails to provide relevant information when requested.

13 (2) As used in this subsection, the term "information"
14 includes any documents, insurance policies, police reports or
15 any reasonable request by the claims processor to enforce the
16 board's rights.

17 (c) Penalty for fraud.--

18 (1) In any case in which the board finds that an
19 eligible individual is receiving benefits based on false
20 information, the additional amounts received predicated on
21 the false information, together with interest doubled and
22 compounded and legal fees, shall be due from the member.

23 (2) To secure payment of funds, the board may garnish or
24 attach all or a portion of any compensation payable to the
25 party by the party's employer, any annuity payable to the
26 party by the retirement system, any accumulated deductions
27 held by the retirement system in the party's account or any
28 process whatsoever.

29 § 338. Miscellaneous provisions.

30 (a) Construction of chapter.--

1 (1) Any termination or other modifications of the
2 program, including, but not limited to, a change in rates,
3 benefits options or structure of the provision of health care
4 benefits, shall not give rise to any contractual rights or
5 claims by any eligible individuals or any other person
6 claiming an interest, either directly or indirectly, in the
7 program. No provisions of this chapter, nor any rule or
8 regulation adopted under this chapter, shall create in any
9 person a contractual right in that provision.

10 (2) The provisions of this chapter are severable and if
11 any of its provisions shall be held to be unconstitutional,
12 the decision of the court shall not affect or impair any of
13 the remaining provisions. It is hereby declared to be the
14 legislative intent that this chapter would have been adopted
15 had the unconstitutional provisions not been included.

16 (3) This subsection shall not apply to policies designed
17 primarily to provide coverage payable on a per diem, fixed
18 indemnity or nonexpense incurred basis, or policies that
19 provide accident only coverage, where payment for such policy
20 is made solely by the school employee.

21 (b) Hold harmless.--

22 (1) Neither the Commonwealth nor the board, including
23 their respective officers, directors and employees, shall be
24 liable for any claims, demands, actions or liability of any
25 nature, including, but not limited to, attorney fees and
26 court costs, based upon or arising out of the operations of
27 the program, whether incurred directly or indirectly.

28 (2) The eligible individuals who enroll and participate
29 in the program shall be deemed to agree, on behalf of
30 themselves and their heirs, successors and assigns, to hold

1 harmless the Commonwealth and the board, including their
2 respective officers, directors and employees, from any
3 claims, demands, actions or liability of any nature, whether
4 directly or indirectly, including attorney fees and court
5 costs, based upon or arising out of the operation of the
6 program.

7 (c) No recourse.--Under no circumstances shall the assets of
8 the Commonwealth be liable for or its assets be used to pay any
9 claims, demands, actions or liability of any nature, whether
10 directly or indirectly, including, but not limited to, attorney
11 fees and court costs, based upon or arising out of the operation
12 of the program.

13 (d) Reservation of immunities.--Nothing contained in this
14 chapter shall be construed as a waiver of the Commonwealth's or
15 board's immunities, defenses, rights or actions arising out of
16 their sovereign status or from the 11th amendment to the
17 Constitution of the United States.

18 (e) Collective bargaining, mediation and binding
19 arbitration.--Except as otherwise provided in subsection (f),
20 nothing in this chapter or in any other law shall be construed:

21 (1) To permit, authorize or require collective
22 bargaining, mediation or binding arbitration to create, alter
23 or modify health benefits set forth in this chapter or
24 administered by the board for school employees and their
25 health care dependents.

26 (2) To permit, authorize or require a public school
27 entity, through collective bargaining, mediation or binding
28 arbitration, or otherwise, to establish, create, alter or
29 modify a health benefits plan or pay health benefits
30 specified in this chapter or administered by the board that

1 modify or supplement in any way the health benefits specified
2 in this chapter for school employees and their health care
3 dependents.

4 (f) Exceptions.--

5 (1) The parties may:

6 (i) Continue to engage in collective bargaining with
7 regard to health benefits until such time as the board-
8 sponsored program, under this subchapter, is released and
9 the benefit packages are made available to employees of a
10 public school entity. However, any health benefits
11 provided under a collective bargaining agreement entered
12 into on or after the effective date of this section shall
13 contain a provision that school employees covered by the
14 agreement must join the board-sponsored program as
15 required by section 332 (relating to mandatory
16 participation and optional membership) as a condition of
17 continuing to receive health benefits. The board shall
18 determine the appropriate timing and phase-in of the
19 program in any public school entity taking into
20 consideration the need for the public school entity to
21 properly terminate any existing health benefits
22 arrangements.

23 (ii) Negotiate or otherwise agree to provide or make
24 payment for supplemental benefits that have not been
25 included as part of the benefit package.

26 (2) Nothing contained in this chapter shall restrict a
27 public school entity from negotiating or otherwise agreeing
28 to make payment for postretirement health benefits for
29 members or as may be provided for in Subchapter F (relating
30 to retirement health savings plan).

1 (g) Initial qualified majority vote requirement.--A
2 qualified majority vote of the board that occurs on or before
3 December 31, 2019, must include the support of either the
4 Secretary of the Budget or the Insurance Commissioner.

5 SUBCHAPTER E

6 (RESERVED)

7 SUBCHAPTER F

8 RETIREMENT HEALTH SAVINGS PLAN

9 Sec.

10 361. Retirement health savings plan.

11 § 361. Retirement health savings plan.

12 (a) Duty of board to establish.--The board shall establish a
13 retirement health savings plan through which school employees
14 can save to cover health-related expenses following retirement.
15 For this purpose the board shall make available one or more
16 trusts including a governmental trust or governmental trusts
17 authorized under the IRC as eligible for tax-preferred or tax-
18 free treatment. The board may promulgate regulations regarding
19 the prudent and efficient operation of the retirement health
20 savings plan, including, but not limited to:

21 (1) Establishment of an annual administrative budget and
22 disbursements in accordance with the budget.

23 (2) Determination of the structure of the retirement
24 health savings accounts available to eligible school
25 employees.

26 (3) Determination of enrollment procedures.

27 (b) Contracting authorized.--The board may administer the
28 retirement health savings plan and contract with any lawfully
29 authorized entities to provide investment services,
30 recordkeeping, benefit payments and other functions necessary

1 for the administration of the retirement health savings plan.
2 The board may contract with the retirement system to invest
3 funds in an account that shall be maintained and accounted for
4 separately from the funds of the retirement system and invested
5 in a prudent manner intended to maximize the safety of the
6 capital, with all earnings derived from investment of the assets
7 to be credited to the retirement health savings plan. Costs and
8 expenses incurred by the retirement system in administering the
9 investment option shall be paid by the retirement health savings
10 plan.

11 (c) Separate account.--All funds related to the retirement
12 health savings plan shall be maintained and accounted for
13 separately from the program sponsored by the board. The assets
14 of the retirement health savings plan shall not be liable or
15 utilized for payment of any expenses or claims incurred by the
16 program other than as may be directed by the participant account
17 holder for reimbursement of an IRC-qualifying health-related
18 expense.

19 (d) Enrollment.--The board shall establish eligibility
20 guidelines consistent with the IRC for school employees to
21 participate in the retirement health savings plan.

22 (e) Contributions.--

23 (1) The board shall determine what contributions are
24 eligible under the IRC for tax-preferred or tax-free
25 treatment and may be made into a retirement health savings
26 plan by a school employee. The board shall authorize and
27 allow contributions, subject to appropriate limits as may be
28 established by the board, to be paid by a school employee
29 electing participation in the retirement health savings plan
30 subject to the following conditions:

1 (i) A mandatory school employee contribution
2 established as a fixed percentage of compensation may be
3 established through a collective bargaining agreement
4 between a public school entity and a bargaining group
5 representing school employees. The retirement health
6 savings plan contribution rate does not have to be
7 uniform for all groups of school employees.

8 (ii) An optional employee contribution at a fixed
9 percentage of compensation may be elected by a school
10 employee during an annual election window that, once
11 elected, shall continue in effect, except to the extent
12 it may be changed or discontinued at a subsequent annual
13 election window as provided for by the board or
14 supplanted by a mandatory contribution.

15 (iii) An optional school employee contribution of
16 all or any portion of annual leave, vacation pay,
17 personal days or sick leave may be elected by a school
18 employee as so designated by the employee and agreed to
19 by the employee's employer. The board may provide that
20 the election shall be made during an annual election
21 window of no greater than 90 days as determined by the
22 board. Once the election has been made, an employee shall
23 not be allowed to change the amount or discontinue the
24 contributions until the next annual election window.

25 (2) The following contributions shall be made into a
26 retirement health savings plan on behalf of a school
27 employee:

28 (i) For an employee who elects participation in the
29 retirement health savings plan, the employee's employer
30 shall make a contribution to the employee's account equal

1 to the public school entity's savings in Social Security
2 and Medicare taxes resulting from the tax-preferred or
3 tax-free treatment of contributions made by the school
4 employee under this subsection. Additional contributions
5 by a public school entity may be established through a
6 collective bargaining agreement between a public school
7 entity and a bargaining group representing school
8 employees.

9 (ii) Any other payments by the Commonwealth or
10 public school entity, including any set-aside payments to
11 be made to school employee accounts under section 334
12 (relating to partnership for stable benefits funding) as
13 determined by the board.

14 (3) Contributions to the plan by a school employee or by
15 the Commonwealth or a public school entity on behalf of an
16 employee must be held in trust for reimbursement of employee
17 health-related expenses and the health-related expenses of
18 any health care dependents following retirement of the
19 employee or when otherwise determined to be benefit eligible.
20 The board shall maintain a separate account of the
21 contributions made by or on behalf of each participant and
22 the earnings on the contributions. The board shall make
23 available a selection of investment options for participants
24 who wish to direct the investment of the accumulations in the
25 participant's account, in addition to a default option for
26 participants to be invested in a prudent manner as determined
27 by the board.

28 (f) Reimbursement for health-related expenses.--

29 (1) Upon retirement or separation from employment with a
30 public school entity, a participant becomes eligible to seek

1 reimbursements for IRC-qualifying health-related expenses
2 from the participant's retirement health savings plan
3 account, including reimbursements for the health-related
4 expenses of the participant's eligible health care
5 dependents.

6 (2) If a school employee dies prior to exhausting the
7 balance in the employee's retirement health savings plan
8 account, the employee's health care dependents are eligible
9 to seek reimbursement for IRC-qualifying health-related
10 expenses from the account.

11 (3) The board shall pay reimbursements from a retirement
12 health savings plan account until the accumulation in the
13 account has been exhausted. If an account balance remains
14 after the death of all participant account holders, the
15 remainder of the account must be paid to the school
16 employee's beneficiaries or, if none, to the employee's
17 estate.

18 (g) Annual financial statement.--Quarterly and annually the
19 board shall prepare summary retirement health savings plan
20 statements for individual participant account holders listing
21 information on contributions, investment earnings and
22 distributions for the account holders' accounts.

23 (h) Fees.--The board may charge uniform fees to participants
24 to cover the ongoing costs of operating the plan. Any fees not
25 needed must revert to participant accounts or be used to reduce
26 plan fees the following year.

27 (i) Advisory committee.--

28 (1) The board shall establish a participant advisory
29 committee for the retirement health savings plan composed of:

30 (i) One representative appointed by each Statewide

1 union that represents bargaining groups of school
2 employees participating in the plan.

3 (ii) One representative of each Statewide
4 organization representing at least 10% of annuitants.

5 (iii) One representative of the Pennsylvania
6 Association of School Business Officials.

7 (iv) One representative of the Pennsylvania School
8 Boards Association.

9 (2) Each participant group shall be responsible for the
10 expenses of its own representative.

11 (3) The advisory committee shall meet at least two times
12 per year and shall be consulted on plan offerings. By October
13 1 of each year, the board shall give the advisory committee a
14 statement of fees collected and the use of the fees.

15 Section 2. This act shall take effect immediately.