

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1606 Session of 2009

INTRODUCED BY YUDICHAK, DeLUCA, MURPHY, BOYD, ADOLPH, BELFANTI, BEYER, BRENNAN, CALTAGIRONE, CARROLL, CASORIO, COHEN, DEASY, DONATUCCI, FABRIZIO, FREEMAN, GEORGE, GIBBONS, GRUCELA, HARKINS, HENNESSEY, HORNAMAN, JOSEPHS, W. KELLER, KULA, MANDERINO, McGEEHAN, MELIO, MOUL, MUNDY, MURT, M. O'BRIEN, PALLONE, READSHAW, SANTONI, SEIP, SIPTROTH, K. SMITH, SOLOBAY, J. TAYLOR, VULAKOVICH, WALKO AND WHITE, JUNE 3, 2009

REFERRED TO COMMITTEE ON INSURANCE, JUNE 3, 2009

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
2 "An act providing for and reorganizing the conduct of the
3 executive and administrative work of the Commonwealth by the
4 Executive Department thereof and the administrative
5 departments, boards, commissions, and officers thereof,
6 including the boards of trustees of State Normal Schools, or
7 Teachers Colleges; abolishing, creating, reorganizing or
8 authorizing the reorganization of certain administrative
9 departments, boards, and commissions; defining the powers and
10 duties of the Governor and other executive and administrative
11 officers, and of the several administrative departments,
12 boards, commissions, and officers; fixing the salaries of the
13 Governor, Lieutenant Governor, and certain other executive
14 and administrative officers; providing for the appointment of
15 certain administrative officers, and of all deputies and
16 other assistants and employees in certain departments, boards,
17 and commissions; and prescribing the manner in which the
18 number and compensation of the deputies and all other
19 assistants and employees of certain departments, boards and
20 commissions shall be determined," establishing the Office of
21 Consumer Advocate for Health Insurance as an office within
22 the Office of Consumer Advocate and prescribing its powers
23 and duties; establishing the Consumer Advocate for Health
24 Insurance Fund; and making editorial changes.

25 The General Assembly of the Commonwealth of Pennsylvania
26 hereby enacts as follows:

1 Section 1. Article IX-A of the act of April 9, 1929 (P.L.
2 177, No.175), known as The Administrative Code of 1929, is
3 amended by adding a subarticle heading to read:

4 ARTICLE IX-A

5 OFFICE OF CONSUMER ADVOCATE

6 (a) General Provisions

7 Section 2. Article IX-A of the act is amended by adding a
8 subarticle to read:

9 (b) Office of Consumer Advocate

10 for Health Insurance

11 Section 921-A. Definitions.

12 The following words and phrases when used in this subarticle
13 shall have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Consumer." A person who is a named insured, insured or
16 beneficiary of a policy of health insurance or any other person
17 who may be affected in any way by the Insurance Department's
18 exercise of or the failure to exercise its authority.

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

20 "Fund." The Consumer Advocate for Health Insurance Fund
21 established pursuant to section 926-A.

22 "Insurer." Any "company," "association" or "exchange" as
23 such terms are defined in section 101 of the act of May 17, 1921
24 (P.L.682, No.284), known as The Insurance Company Law of 1921 or
25 any entity subject to 40 Pa.C.S. Ch. 61 (relating to hospital
26 plan corporations) or 63 (relating to professional health
27 services plan corporations) or Article XXIV of The Insurance
28 Company Law of 1921 or the act of December 29, 1972 (P.L.1701,
29 No.364), known as the Health Maintenance Organization Act.

30 Section 922-A. Office of Consumer Advocate for Health

1 Insurance.

2 (a) Office established.--There is hereby established as an
3 office within the Department of Community and Economic
4 Development an Office of Consumer Advocate for Health Insurance
5 to represent the interests of consumers before the department.

6 (b) Consumer Advocate for Health Insurance.--The Office of
7 Consumer Advocate for Health Insurance shall be headed by the
8 Consumer Advocate for Health Insurance appointed by the Governor
9 who by reason of training, experience and attainment is
10 qualified to represent the interests of consumers. The term of
11 the Consumer Advocate shall be for six years, and no person
12 shall serve for more than two terms. Compensation shall be set
13 by the Executive Board, established under section 204 of the act
14 of April 9, 1929 (P.L.177, No.175), known as The Administrative
15 Code of 1929.

16 (c) Conflict of interest.--No individual who serves as a
17 Consumer Advocate for Health Insurance shall, while serving in
18 the position, engage in any business, vocation or other
19 employment, or have other interests, inconsistent with the
20 official responsibilities, nor shall the individual seek or
21 accept employment nor render beneficial services for
22 compensation with any insurer subject to the authority of the
23 office during the tenure of the appointment and for a period of
24 two years immediately after the appointment is served or
25 terminated.

26 (d) Restriction.--Neither the Consumer Advocate for Health
27 Insurance nor an employee of the Consumer Advocate shall be
28 employed by or be pecuniarily interested in any insurance
29 company, association or exchange, or in any insurance business,
30 other than as a policyholder.

1 (e) Political office.--Any individual who is appointed to
2 the position of Consumer Advocate for Health Insurance shall not
3 seek election nor accept appointment to any political office
4 during the tenure as Consumer Advocate for Health Insurance and
5 for a period of two years after the appointment is served or
6 terminated.

7 Section 923-A. Assistant consumer advocates for health
8 insurance; employees.

9 The Consumer Advocate for Health Insurance shall appoint
10 attorneys as assistant consumer advocates for health insurance
11 and additional clerical, technical and professional staff as may
12 be appropriate, and may contract for additional services as
13 shall be necessary for the performance of the duties imposed by
14 this subarticle. The compensation of assistant consumer
15 advocates for health insurance and clerical, technical and
16 professional staff shall be set by the Executive Board. No
17 assistant consumer advocate for health insurance or other staff
18 employee shall, while serving in the position, engage in any
19 business, vocation or other employment, or have other interests,
20 inconsistent with official responsibilities.

21 Section 924-A. Powers and duties of Consumer Advocate for
22 Health Insurance.

23 (a) Representation of consumer interests.--In addition to
24 any other authority conferred by this subarticle, the Consumer
25 Advocate for Health Insurance is authorized to and shall, in
26 carrying out the responsibilities under this subarticle,
27 represent the interests of consumers as a party, or otherwise
28 participate for the purpose of representing an interest of
29 consumers, before the department in any matter properly before
30 the department, and before any court or agency, initiating

1 proceedings if, in the judgment of the Consumer Advocate for
2 Health Insurance, the representation may be necessary, in
3 connection with any matter involving regulation by the
4 department or the corresponding regulatory agency of the United
5 States, whether on appeal or otherwise initiated.

6 (b) Exercise of discretion.--The Consumer Advocate for
7 Health Insurance may exercise discretion in determining the
8 interests of consumers that will be advocated in any particular
9 proceeding and in determining whether to participate in or
10 initiate any particular proceeding. In making a determination,
11 the Consumer Advocate for Health Insurance shall consider the
12 public interest, the resources available and the substantiality
13 of the effect of the proceeding on the interests of consumers.
14 The Consumer Advocate for Health Insurance may refrain from
15 intervening when, in the judgment of the Consumer Advocate for
16 Health Insurance, intervention is not necessary to represent
17 adequately the interests of consumers.

18 (c) Action on petition.--In addition to any other authority
19 conferred by this subarticle, the Consumer Advocate for Health
20 Insurance is authorized to represent an interest of consumers
21 that is presented for consideration upon petition in writing by
22 a substantial number of persons who are consumers of an insurer
23 subject to regulation by the department. The Consumer Advocate
24 for Health Insurance shall notify the principal sponsors of the
25 petition within a reasonable time after receipt of the petition
26 of the action taken or intended to be taken with respect to the
27 interests of consumers presented in that petition. If the
28 Consumer Advocate for Health Insurance declines or is unable to
29 represent the interests, written notification and the reasons
30 for the action shall be given to the sponsors.

1 (d) Name in which action is brought.--Any action brought by
2 the Consumer Advocate for Health Insurance before a court or an
3 agency of this Commonwealth shall be brought in the name of the
4 Consumer Advocate for Health Insurance. The Consumer Advocate
5 for Health Insurance may name a consumer or group of consumers
6 in whose name the action may be brought or may join with a
7 consumer or group of consumers in bringing the action.

8 (e) Public statement.--At a time that the Consumer Advocate
9 for Health Insurance determines, in accordance with applicable
10 time limitations, to initiate, intervene or otherwise
11 participate in any department, agency or court proceeding, the
12 Consumer Advocate for Health Insurance shall issue publicly a
13 written statement, a copy of which shall be filed in the
14 proceeding in addition to any required entry of appearance,
15 stating concisely the specific interests of consumers to be
16 protected.

17 Section 925-A. Duties of department.

18 In dealing with any proposed action that may substantially
19 affect the interests of consumers, including, but not limited
20 to, a proposed change of rates and the adoption of rules,
21 regulations, guidelines, orders, standards or final policy
22 decisions, the department shall:

23 (1) Notify the Consumer Advocate for Health Insurance
24 when notice of the proposed action is given to the public or
25 at a time fixed by agreement between the Consumer Advocate
26 for Health Insurance and the department in a manner to assure
27 the Consumer Advocate for Health Insurance reasonable notice
28 and adequate time to determine whether to intervene in the
29 matter.

30 (2) Consistent with its other statutory

1 responsibilities, take action with due consideration to the
2 interests of consumers.

3 Section 926-A. Assessment upon insurance companies,
4 disposition, appropriation and disbursement of
5 assessments.

6 (a) Estimate of expenditures.--Before November 1, 2009, for
7 fiscal year 2010-2011, and before November 1 of each year
8 thereafter, the Office of Consumer Advocate for Health Insurance
9 shall estimate the total expenditures for the Office of Consumer
10 Advocate for Health Insurance and submit the estimate to the
11 Governor in accordance with section 610. At the same time the
12 Consumer Advocate for Health Insurance submits the estimate to
13 the Governor, the Consumer Advocate for Health Insurance shall
14 also submit that estimate to the General Assembly. The estimate
15 shall not exceed an amount equal to the total assessments as
16 provided in this section.

17 (b) Budget procedures.--The Consumer Advocate for Health
18 Insurance or designated representatives shall be afforded an
19 opportunity to appear before the Governor, the Appropriations
20 Committee of the Senate and the Appropriations Committee of the
21 House of Representatives regarding the estimate. If the General
22 Assembly fails to approve the Consumer Advocate for Health
23 Insurance's budget for the purposes of this section by March 30,
24 the department shall assess insurers on the basis of the
25 assessment provided in this section. At such time as the General
26 Assembly approves the proposed budget, the Consumer Advocate for
27 Health Insurance and the department shall make an adjustment in
28 the assessments to reflect the approved budget. The Office of
29 Consumer Advocate shall subtract from the budget finally
30 approved by the General Assembly any balance of the

1 appropriation to be carried over into the fiscal year from the
2 preceding fiscal year.

3 (c) Assessment.--For fiscal year 2010-2011 an assessment on
4 each insurer who writes coverages for health and health under
5 life/annuity/accident, including annuities, in this Commonwealth
6 shall be made. Each insurer shall be assessed an amount equal to
7 the product obtained by multiplying \$2,000,000 by a fraction,
8 the numerator of which is the direct premium collected for all
9 coverages by that insurer in this Commonwealth during the
10 preceding calendar year and the denominator of which is the
11 direct premium written on such coverages in this Commonwealth by
12 all insurers in the same period.

13 (d) Adjustment.--In succeeding years the General Assembly
14 may vary the base amount of \$2,000,000 based upon the actual
15 funding experience and requirements of the Office of Consumer
16 Advocate for Health Insurance.

17 (e) Fund.--All assessments received, collected or recovered
18 under this subarticle shall be paid by the department into a
19 separate account in the State Treasury, to be known as the
20 Consumer Advocate for Health Insurance Fund through the
21 Department of Revenue.

22 (f) Use of fund.--All assessments paid into the Consumer
23 Advocate for Health Insurance Fund shall be held in trust solely
24 for the purpose of defraying the cost of the administration and
25 performance of the duties of the Office of Consumer Advocate for
26 Health Insurance, related judicial proceedings and other such
27 matters within the jurisdiction of the Office of Consumer
28 Advocate for Health Insurance, and shall be earmarked for the
29 use of, and annually appropriated to, the Office of Consumer
30 Advocate for disbursement solely for that purpose. The fund

1 shall be subject to audit by the Auditor General.

2 (g) Construction.--Assessments made under this section shall
3 not be considered burdens and prohibitions under section 212 of
4 the act of May 17, 1921 (P.L.789, No.285), known as The
5 Insurance Department Act of 1921.

6 (h) Requisitions.--All requisitions upon the appropriation
7 shall be signed by the Consumer Advocate for Health Insurance or
8 the deputies that the Consumer Advocate for Health Insurance may
9 designate in writing to the State Treasurer and shall be
10 presented to the State Treasurer and dealt with by the State
11 Treasurer and the Treasury Department in the manner prescribed
12 under the act of April 9, 1929 (P.L.343, No.176), known as The
13 Fiscal Code.

14 (i) Balance.--In the event that the fund is dissolved or the
15 Office of Consumer Advocate for Health Insurance is terminated
16 by operation of law, any balance remaining in the fund, after
17 deducting administrative costs for liquidation, shall be
18 returned to insurers in proportion to their financial
19 contributions to the fund in the preceding calendar year.

20 Section 927-A. Reports.

21 The Consumer Advocate for Health Insurance shall annually
22 transmit to the Governor, to the Attorney General and to the
23 General Assembly, and shall make available to the public, an
24 annual report on the conduct of the Office of Consumer Advocate
25 for Health Insurance. The Consumer Advocate for Health Insurance
26 shall make recommendations as may from time to time be necessary
27 or desirable to protect the interests of consumers.

28 Section 928-A. Savings provision and construction.

29 (a) No bar to action.--Nothing contained in this subarticle
30 shall limit the right of a consumer to bring a proceeding before

1 either the department or a court.

2 (b) No impairment to department.--Nothing contained in this
3 subarticle shall be construed to impair the statutory authority
4 or responsibility of the department to regulate insurers in the
5 public interest.

6 Section 3. This act shall take effect as follows:

7 (1) The addition of section 926-A of the act shall take
8 effect in 90 days.

9 (2) This section shall take effect immediately.

10 (3) The remainder of this act shall take effect July 1,
11 2009, or immediately, whichever is later.