

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 439 Session of 2013

INTRODUCED BY HARPER, O'NEILL, PASHINSKI, B. BOYLE, D. COSTA,
SANTARSIERO, KORTZ, MUNDY, HARKINS, MOLCHANY, SWANGER, COHEN,
HENNESSEY, DELUCA, WATSON, MOUL, QUINN AND MURT,
FEBRUARY 4, 2013

REFERRED TO COMMITTEE ON INSURANCE, FEBRUARY 4, 2013

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:

27 Section 1. Article IX-A of the act of April 9, 1929
28 (P.L.177, No.175), known as The Administrative Code of 1929, is

1 amended by adding a subarticle heading to read:

2 ARTICLE IX-A

3 OFFICE OF CONSUMER ADVOCATE

4 (a) General Provisions

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

7 (b) Office of Consumer Advocate for Health Insurance

8 Section 921-A. Definitions.

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

12 "Consumer." A person who is a named insured, insured or
13 beneficiary of a policy of health insurance, including, but not
14 limited to, employers who purchase group insurance for
15 themselves and their employees, or any other person who may be
16 affected in any way by the Insurance Department's exercise of or
17 the failure to exercise its authority.

18 "Consumer advocate." The Consumer Advocate for Health
19 Insurance established in this subarticle.

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

21 "Fund." The Consumer Advocate for Health Insurance Fund
22 established in this subarticle.

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

1 Maintenance Organization Act.

2 "Office." The Office of Consumer Advocate for Health
3 Insurance established in this subarticle.

4 Section 922-A. Office of Consumer Advocate for Health
5 Insurance.

6 (a) Establishment of office.--The Office of Consumer
7 Advocate for Health Insurance is established within the Office
8 of Attorney General to represent the interests of consumers
9 before the department.

10 (b) Consumer Advocate for Health Insurance.--

11 (1) The office shall be headed by the Consumer Advocate
12 for Health Insurance appointed by the Governor with the
13 advice and consent of the Senate, who by reason of training,
14 experience and attainment is qualified to represent the
15 interests of consumers.

16 (2) The term of the consumer advocate shall be for six
17 years.

18 (3) Compensation of the consumer advocate shall be set
19 by the Attorney General.

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

29 (d) Restriction.--Neither the consumer advocate nor an
30 employee of the consumer advocate shall be employed by or be

pecuniarily interested in any health insurance company,
association or exchange, or in any health insurance business,
other than as a policyholder.

(e) Political office.--No individual who is appointed as
consumer advocate may seek election nor accept appointment to
any political office during the tenure as consumer advocate and
for a period of two years after the appointment is served or
terminated.

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

The consumer advocate shall appoint attorneys as assistant
consumer advocates for health insurance and additional clerical,
technical and professional staff as may be appropriate, and may
contract for additional services as shall be necessary for the
performance of the duties imposed by this subarticle. The
compensation of assistant consumer advocates for health
insurance and clerical, technical and professional staff shall
be set by the Attorney General. No assistant consumer advocate
for health insurance or other staff employee shall, while
serving in the position, engage in any business, vocation or
other employment, or have other interests, inconsistent with
official responsibilities.

Section 924-A. Powers and duties.

(a) Representation of consumer interests.--In addition to
any other authority conferred by this subarticle, the consumer
advocate shall, in carrying out the responsibilities under this
subarticle, represent the interests of consumers as a party, or
otherwise participate for the purpose of representing an
interest of consumers, before the department in any matter
properly before the department, and before any court or agency,

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

6 (b) Cooperation.--The consumer advocate shall cooperate with
7 a navigator or consumer assistant established under the Patient
8 Protection and Affordable Care Act (Public Law 111-148, 124
9 Stat. 119).

10 (c) Exercise of discretion.--

11 (1) The consumer advocate may exercise discretion in
12 determining the interests of consumers that will be advocated
13 in any particular proceeding and in determining whether to
14 participate in or initiate any particular proceeding.

15 (2) In making a determination, the consumer advocate
16 shall consider the public interest, the resources available
17 and the substantiality of the effect of the proceeding on the
18 interests of consumers.

19 (3) The consumer advocate may refrain from intervening
20 when, in the judgment of the consumer advocate, intervention
21 is not necessary to represent adequately the interests of
22 consumers.

23 (d) Action on petition.--

24 (1) In addition to any other authority conferred by this
25 subarticle, the consumer advocate may represent an interest
26 of consumers that is presented for consideration upon
27 petition in writing by a substantial number of persons who
28 are consumers of a health insurer subject to regulation by
29 the department.

30 (2) The consumer advocate shall notify the principal

sponsors of the petition within a reasonable time after receipt of the petition of the action taken or intended to be taken with respect to the interests of consumers presented in that petition.

(3) If the consumer advocate declines or is unable to represent the interests, written notification and the reasons for the action shall be given to the sponsors.

(e) Name in which action is brought.--

(1) Any action brought by the consumer advocate before a court or an agency of this Commonwealth shall be brought in the name of the consumer advocate.

(2) The consumer advocate may designate a consumer or group of consumers in whose name the action may be brought or may join with a consumer or group of consumers in bringing the action.

(f) Public statement.--At a time that the consumer advocate determines, in accordance with applicable time limitations, to initiate, intervene or otherwise participate in a department, agency or court proceeding, the consumer advocate shall issue publicly a written statement, a copy of which shall be filed in the proceeding in addition to any required entry of appearance, stating concisely the specific interests of consumers to be protected.

Section 925-A. Duties of department.

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

(1) Notify the consumer advocate when notice of the

1 proposed action is given to the public or at a time fixed by
2 agreement between the consumer advocate and the department in
3 a manner to assure the consumer advocate reasonable notice
4 and adequate time to determine whether to intervene in the
5 matter.

6 (2) Consistent with its other statutory
7 responsibilities, take action with due consideration to the
8 interests of consumers.

9 Section 926-A. Assessment upon insurance companies,
10 disposition, appropriation and disbursement of
11 assessments.

12 (a) Estimate of expenditures.--

13 (1) Before November 1 of each year, the office shall
14 estimate the total expenditures for the office and submit the
15 estimate to the Governor in accordance with section 610.

16 (2) At the same time the consumer advocate submits the
17 estimate to the Governor, the consumer advocate shall also
18 submit that estimate to the General Assembly.

19 (3) The estimate shall not exceed an amount equal to the
20 total assessments as provided in this section.

21 (b) Budget procedures.--

22 (1) The consumer advocate or designated representatives
23 shall be afforded an opportunity to appear before the
24 Governor, the Appropriations Committee of the Senate and the
25 Appropriations Committee of the House of Representatives
26 regarding the estimate.

27 (2) If the General Assembly fails to approve the
28 consumer advocate's budget for the purposes of this section
29 by March 30, the department shall assess insurers on the
30 basis of the assessment provided in this section.

1 (3) At such time as the General Assembly approves the
2 proposed budget, the consumer advocate and the department
3 shall make an adjustment in the assessments to reflect the
4 approved budget.

5 (4) The office shall subtract from the budget finally
6 approved by the General Assembly any balance of the
7 appropriation to be carried over into the fiscal year from
8 the preceding fiscal year.

9 (c) Assessment.--For fiscal year 2011-2012 an assessment on
10 each health insurer who writes coverages for health and health
11 under life/annuity/accident, including annuities, in this
12 Commonwealth shall be made. Each health insurer shall be
13 assessed an amount equal to the product obtained by multiplying
14 \$2,000,000 by a fraction, the numerator of which is the direct
15 premium collected for all coverages by that health insurer in
16 this Commonwealth during the preceding calendar year and the
17 denominator of which is the direct premium written on such
18 coverages in this Commonwealth by all health insurers in the
19 same period.

20 (d) Adjustment.--In succeeding years the General Assembly
21 may vary the base amount of \$2,000,000 based upon the actual
22 funding experience and requirements of the office.

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

28 (f) Use of fund.--All assessments paid into the Consumer
29 Advocate for Health Insurance Fund shall be held in trust solely
30 for the purpose of defraying the cost of the administration and

performance of the duties of the office, related judicial proceedings and other such matters within the jurisdiction of the office, and shall be earmarked for the use of, and annually appropriated to, the office for disbursement solely for that purpose. The fund shall be subject to audit by the Auditor General.

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

(h) Requisitions.--All requisitions upon the appropriation shall be signed by the consumer advocate or the deputies that the consumer advocate may designate in writing to the State Treasurer and shall be presented to the State Treasurer for payment in the manner prescribed under the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

(i) Balance.--In the event that the fund is dissolved or the office is abolished by operation of law, any balance remaining in the fund, after deducting administrative costs for liquidation, shall be returned to insurers in proportion to their financial contributions to the fund in the preceding calendar year.

Section 927-A. Reports.

The consumer advocate shall annually transmit to the Governor, to the Attorney General and to the General Assembly, and shall make available to the public, an annual report on the conduct of the office. The consumer advocate shall make recommendations as may from time to time be necessary or desirable to protect the interests of consumers.

Section 928-A. Savings provision and construction.

1 (a) No bar to action.--Nothing contained in this subarticle
2 shall limit the right of a consumer to bring a proceeding before
3 either the department or a court.

4 (b) No impairment to department.--Nothing contained in this
5 subarticle shall be construed to impair the statutory power or
6 duty of the department to regulate health insurers in the public
7 interest.

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

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

11 (2) This section shall take effect immediately.

12 (3) The remainder of this act shall take effect
13 immediately.